

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property Summary

American Jurisprudence, Second Edition | May 2021 Update

Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

[Correlation Table](#)

Summary

Scope:

This article covers matters relating to abandonment of personal property and property rights, generally, as a mode of divestiture of the right and title to property, as well as the subjects of lost property, mislaid property, treasure trove, and articles embedded in the soil; the distinctions between each of them; the effect of abandonment; the legal principles governing lost or mislaid property; and the rights, duties, and liabilities of the finder, the owners, and others concerned with such property. It also covers the disposition of unclaimed funds, deposits, and intangibles; the power of the State to provide for disposition of such funds; the construction of statutes, including the Uniform Unclaimed Property Act, which provide for their disposition; and the rights of owners to reclaim their property.

Federal Aspects:

This article discusses federal statutes regulating abandonment of property to the federal government in certain situations, including abandonment at trade fairs ([19 U.S.C.A. § 1753](#)), as well as abandonment of property within the armed forces ([10 U.S.C.A. § 1275](#)) and custody rights to abandoned money orders and travelers' checks ([12 U.S.C.A. § 2503\(3\)](#)). In addition, beyond the scope of this article are such topics as federal tax consequences of abandonment, including income tax deductibility for depreciation, obsolescence, depletion, or retirement (see Am. Jur. 2d, Federal Taxation[[WestlawNext® Search Query](#)]), and the need to file certain types of information returns on abandoned property held as security for loans (see Am. Jur. 2d, Federal Taxation[[WestlawNext®\(r\) Search Query](#)]).

Treated Elsewhere:

Adverse possession of abandoned property, see [Am. Jur. 2d, Adverse Possession §§ 89 to 92](#)

Animals, lost or abandoned, see [Am. Jur. 2d, Animals § 46](#)

Carrier's liability for loss or abandonment of baggage and other property, see [Am. Jur. 2d, Carriers §§ 442, 1196 to 1250](#)

Customs duties on abandoned or worthless property, see [Am. Jur. 2d, Customs Duties and Import Regulations §§ 168, 205](#)

Easements, abandonment of, see [Am. Jur. 2d, Easements and Licenses in Real Property § 85](#); [Am. Jur. 2d, Highways, Streets, and Bridges §§ 147, 218 to 222](#)

Escheat of property, see [Am. Jur. 2d, Escheat §§ 3, 5](#)

Franchises, forfeiture of, see [Am. Jur. 2d, Franchises from Public Entities §§ 49 to 53](#)

Homestead property, abandonment of, see [Am. Jur. 2d, Homestead §§ 166 to 173](#)

Larceny of abandoned or mislaid property, see [Am. Jur. 2d, Larceny §§ 98 to 100](#)

Logs and timber, loss of, see [Am. Jur. 2d, Logs and Timber § 91](#)

Loss of dead body, see [Am. Jur. 2d, Dead Bodies § 34](#)

Lost and destroyed instruments, see [Am. Jur. 2d, Lost and Destroyed Instruments §§ 1 et seq.](#)

Mines, abandonment of, see [Am. Jur. 2d, Mines and Minerals §§ 47 to 49, 101, 160](#); [Am. Jur. 2d, Public Lands § 72](#)

Railroads, abandonment of right of way, see [Am. Jur. 2d, Railroads §§ 51 to 54](#)

Rewards for lost property, see [Am. Jur. 2d, Rewards §§ 19, 28](#)

Searches of abandoned property, see [Am. Jur. 2d, Searches and Seizures §§ 22 to 27, 72](#)

Ships, abandonment of, see [Am. Jur. 2d, Shipping §§ 770, 772, 773](#)

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I. In General

A. Sources of Law

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Research References

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 🔑 1.1, 10

A.L.R. Library

A.L.R. Index, Abandonment of Property or Right

West's A.L.R. Digest, [Abandoned and Lost Property](#) 🔑 1.1, 10

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 1

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I. In General

A. Sources of Law

§ 1. Common law

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West's Key Number Digest

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Under common law, there are four categories of “found property,” including money,¹ which are:²

- abandoned property
- lost property
- mislaid property
- treasure trove³

The rights of the finder of such property will depend on how property is classified.

The “law of finds” is a common law principle granting title to the first party to discover and reduce to possession unknown or abandoned artifacts found in the sea.⁴ The law of finds is summed up succinctly as “finders keepers.”⁵ The law of finds exists independently in state law⁶ and the federal common law.⁷ Maritime law also provides a source of law in this area.⁸

Under the law of salvage, a rescuer takes possession but not title to the distressed vessel and its contents and can obtain an award for services rendered.⁹ The law of salvage presumes that property lost at sea is not abandoned, and thus, the true owner retains title to the lost property.¹⁰ Unlike the law of salvage, the law of finds imposes no trust on the finder, who acquires the property for his or her own benefit.¹¹

Observation:

The law of salvage and the law of finds are mutually exclusive.¹² The law of salvage and the law of finds serve different purposes and promote different behaviors, and a claimant cannot “have its cake and eat it too” by invoking both during a single recovery.¹³

§ 1. Common law, 1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 1

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Footnotes

- ¹ Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).
- ² Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980); Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
The common law distinguishes among property that is abandoned, lost, or misplaced. State v. Kealey, 80 Wash. App. 162, 907 P.2d 319 (Div. 2 1995), as amended on denial of reconsideration, (Feb. 26, 1996).
- ³ § 20.
- ⁴ In re Tortorelli, 149 Wash. 2d 82, 66 P.3d 606 (2003).
- ⁵ Odyssey Marine Exploration, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel, 727 F. Supp. 2d 1341 (M.D. Fla. 2010).
Common law of finds expresses ancient and honorable principle of “finders keepers.” Northeast Research, LLC v. One Shipwrecked Vessel, her Tackle, Equipment, Appurtenances, Cargo, 790 F. Supp. 2d 56 (W.D. N.Y. 2011), judgment aff’d, 729 F.3d 197 (2d Cir. 2013).
- ⁶ Dluhos v. Floating and Abandoned Vessel, Known as New York, 162 F.3d 63, 42 Fed. R. Serv. 3d 13 (2d Cir. 1998).
- ⁷ U.S. v. Shivers, 96 F.3d 120 (5th Cir. 1996).
- ⁸ People ex rel. Illinois Historic Preservation Agency v. Zych, 186 Ill. 2d 267, 238 Ill. Dec. 23, 710 N.E.2d 820 (1999).
- ⁹ Odyssey Marine Exploration, Inc. v. Unidentified, Shipwrecked Vessel, 675 F. Supp. 2d 1126 (M.D. Fla. 2009), aff’d, 657 F.3d 1159 (11th Cir. 2011).
- ¹⁰ Odyssey Marine Exploration, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel, 727 F. Supp. 2d 1341 (M.D. Fla. 2010).
- ¹¹ JTR Enterprises, LLC v. An Unknown Quantity of Colombian Emeralds, Amethysts and Quartz Crystals, 922 F. Supp. 2d 1326 (S.D. Fla. 2013), appeal dismissed, (11th Cir. 13-10870)(Mar. 21, 2014).
- ¹² Odyssey Marine Exploration, Inc. v. Unidentified, Shipwrecked Vessel, 675 F. Supp. 2d 1126 (M.D. Fla. 2009), aff’d, 657 F.3d 1159 (11th Cir. 2011).
As to the law of salvage, generally, see Am. Jur. 2d, Salvage §§ 1 to 4.
- ¹³ Odyssey Marine Exploration, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel, 727 F. Supp. 2d 1341 (M.D. Fla. 2010).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 2

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A. Sources of Law

§ 2. Federal laws

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West's Key Number Digest

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A number of federal statutes and regulations expressly address abandonment under particular circumstances, including provisions relating to—

- the disposition of unclaimed property in the control or custody of the armed forces.¹
- the disposition of abandoned money orders and traveler's checks.²
- the abandonment of articles in trade fairs.³
- the preservation and sale of abandoned property.⁴
- the abandonment, destruction, or donation of federal property.⁵
- the disposition of seized, forfeited, voluntarily abandoned, and unclaimed personal property under the custody of any federal agency located in the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Federated States of Micronesia, the Marshall Islands, and Palau.⁶

However, not all federal statutes which regulate property rights govern title in the event of an abandonment. Thus, even assuming that the Archaeological Resources Protection Act⁷ regulates the private collection of nonarchaeological resources, it does not transfer or vest ownership of such nonarchaeological resources in the collectors who find them merely by providing that private collectors need not obtain a permit for the collection of certain artifacts.⁸ Simply by allowing for private collection of nonarchaeological resources, the statute does not thereby entitle collectors to retain or own what they collect.⁹

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Footnotes

¹ 10 U.S.C.A. § 2575.

² 12 U.S.C.A. § 2503.

³ 19 U.S.C.A. § 1753; 19 C.F.R. §§ 127.0 to 127.43, 147.41 to 147.43, 147.46, 147.47.

⁴ 40 U.S.C.A. § 1309.

⁵ 40 U.S.C.A. § 527.

⁶ 41 C.F.R. §§ 102-41.5 et seq.

⁷ 16 U.S.C.A. § 470kk(b).

⁸ U.S. v. Shivers, 96 F.3d 120 (5th Cir. 1996).

⁹ U.S. v. Shivers, 96 F.3d 120 (5th Cir. 1996).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 3

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A. Sources of Law

§ 3. Uniform Unclaimed Property Act; state lost property statutes

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West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  1.1, 10

In 1995, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Unclaimed Property Act. The presumption of abandonment under the Act¹ is statutory and independent from common law principles of abandonment.² Under the Act, ownership of the property remains with the owner and never vests in the state.³ Rather, the Act essentially converts unclaimed or abandoned property into an interest free loan to the state should there be any benefit to possessing the property, and the loan lasts indefinitely until the true owner of the property can be found.⁴

State legislatures have also enacted lost property statutes.⁵ The purpose or goals of lost property statutes are—

- to encourage and facilitate the return of property to the true owner,⁶ by mandating extensive publication and notice requirements.⁷
- to reward a finder for his or her honesty if the property remains unclaimed.⁸
- to award finder's fees.⁹

However, despite the enactment of lost property statutes, courts may continue to use the common law distinctions between classes of found property.¹⁰ Thus, a statute governing the rights of the finders of lost property applies only if the property discovered can be categorized as “lost” property as that term is defined under the common law.¹¹

Observation:

A state's lost property statute may not be directly applicable to lost animals.¹²

CUMULATIVE SUPPLEMENT

Statutes:

In 2016, the National Conference of Commissioners on Uniform State Laws promulgated the Revised Uniform Unclaimed Property Act.

[END OF SUPPLEMENT]

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Footnotes

- 1 § 57.
- 2 Canel v. Topinka, 212 Ill. 2d 311, 288 Ill. Dec. 623, 818 N.E.2d 311 (2004).
- 3 Alvarez v. Pappas, 229 Ill. 2d 217, 321 Ill. Dec. 712, 890 N.E.2d 434 (2008).
- 4 Unit Petroleum Co. v. Veitch, 79 F. Supp. 3d 1234 (N.D. Okla. 2015).
- 5 As to the operation of state lost property statutes, see §§ 21, 32.
- 6 Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995); Graham v. Notti, 147 Wash. App. 629, 196 P.3d 1070 (Div. 3 2008).
- 7 Graham v. Notti, 147 Wash. App. 629, 196 P.3d 1070 (Div. 3 2008).
- 8 Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
- 9 Graham v. Notti, 147 Wash. App. 629, 196 P.3d 1070 (Div. 3 2008).
- 10 Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
- 11 Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
- 12 Graham v. Notti, 147 Wash. App. 629, 196 P.3d 1070 (Div. 3 2008).

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A.L.R. Library

A.L.R. Index, Abandonment of Property or Right

A.L.R. Index, Lost Property

A.L.R. Index, Title and Ownership

A.L.R. Index, Treasure Trove

West's A.L.R. Digest, [Abandoned and Lost Property](#) 🔑 1 to 3, 10

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 4

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§ 4. Definition and scope; abandoned property; abandonment

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West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 1, 1.1

Forms

Answer to property abandonment allegations: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\): Search Query\]](#)

Instruction to jury—Definitions of “abandoned property” and “lost property”: See Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

“Abandoned property” is that to which the owner has voluntarily¹ and intentionally² relinquished his or her interests without vesting ownership in any other person³ and with the intention of not reclaiming it or reassuming its ownership or enjoyment.⁴ “Abandoned property” has been thrown away or voluntarily forsaken by its owner,⁵ leaving it free to be appropriated by any other person.⁶

“Abandonment” has been defined as an intentional and voluntary relinquishment—

— of a right,⁷ particularly a property right⁸ or interest.⁹

— of ownership,¹⁰ so that something ceases to be the property of any person and becomes the subject of appropriation by the first taker.¹¹

— of possession along with an intent to repudiate ownership.¹²

It is a virtual throwing away¹³ without regard as to who may take over or carry on.¹⁴ Maritime law characterizes abandonment as the act of leaving or deserting property without the hope of ever recovering it or the intention of returning to it.¹⁵

Observation:

There is no such thing as an abandonment to particular persons.¹⁶ The owner must leave the property free to the occupation of the next comer, whoever he or she may be.¹⁷

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Footnotes

¹ § 9.

² § 10.

³ In re Hansen, 473 B.R. 240 (Bankr. E.D. Tenn. 2012) (applying Tennessee law); Riverside Drainage Dist. of Sedgwick County v. Hunt, 33 Kan. App. 2d 225, 99 P.3d 1135 (2004); State v. Stinstrom, 261 Or. App. 186, 322 P.3d 1076 (2014).

⁴ In re Panel Town of Dayton, Inc., 338 B.R. 764 (Bankr. S.D. Ohio 2006) (applying Ohio law); Kelley v. Nationwide Auto Restoration, LLC, 246 S.W.3d 470 (Ky. Ct. App. 2007).

⁵ Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Schmidt v. Stearman, 98 Ark. App. 167, 253 S.W.3d 35 (2007).

⁶ Bell Leasing Brokerage, LLC v. Roger Auto Service, Inc., 372 Ill. App. 3d 461, 310 Ill. Dec. 234, 865 N.E.2d 558 (1st Dist. 2007).

⁷ Strawberry Water Co. v. Paulsen, 220 Ariz. 401, 207 P.3d 654 (Ct. App. Div. 1 2008); Greer v. Arroz, 330 S.W.3d 763 (Ky. Ct. App. 2011); Herron v. Barnard, 390 S.W.3d 901 (Mo. Ct. App. W.D. 2013); State v. Branam, 2006 MT 300, 334 Mont. 457, 148 P.3d 635 (2006); Coburn v. Auto-Owners Ins. Co., 189 Ohio App. 3d 322, 2010-Ohio-3327, 938 N.E.2d 400 (10th Dist. Franklin County 2010); Prue v. Royer, 193 Vt. 267, 2013 VT 12, 67 A.3d 895 (2013).
"Abandonment" is the giving up of something to which one is entitled. State v. Branam, 2006 MT 300, 334 Mont. 457, 148 P.3d 635 (2006).

⁸ Cerajeski v. Zoeller, 735 F.3d 577 (7th Cir. 2013) (applying Indiana law); In re T 2 Green, LLC, 363 B.R. 753 (Bankr. D. S.C. 2006) (applying South Carolina law).

⁹ State v. Stinstrom, 261 Or. App. 186, 322 P.3d 1076 (2014).

¹⁰ Jackson v. U.S., 526 F.3d 394 (8th Cir. 2008) (applying Missouri law); Unit Petroleum Co. v. Veitch, 79 F. Supp. 3d 1234 (N.D. Okla. 2015); Schoenholz v. Hinzman, 295 Kan. 786, 289 P.3d 1155 (2012).

¹¹ Jackson v. U.S., 526 F.3d 394 (8th Cir. 2008) (applying Missouri law); Schoenholz v. Hinzman, 295 Kan. 786, 289 P.3d 1155 (2012).

¹² Kelley v. Nationwide Auto Restoration, LLC, 246 S.W.3d 470 (Ky. Ct. App. 2007).

¹³ Johnson-Schmitt v. Robinson, 990 F. Supp. 2d 331 (W.D. N.Y. 2013) (applying New York law).

¹⁴ Long v. Noah's Lost Ark, Inc., 158 Ohio App. 3d 206, 2004-Ohio-4155, 814 N.E.2d 555 (7th Dist. Mahoning County 2004).
The word "abandon" means a giving up, a total desertion, an absolute relinquishment. Ingram v. State, 261 S.W.3d 749 (Tex. App. Tyler 2008).

¹⁵ People ex rel. Illinois Historic Preservation Agency v. Zych, 186 Ill. 2d 267, 238 Ill. Dec. 23, 710 N.E.2d 820 (1999).

¹⁶ UMG Recordings, Inc. v. Augusto, 558 F. Supp. 2d 1055 (C.D. Cal. 2008), judgment aff'd, 628 F.3d 1175 (9th Cir.

2011) (applying California law).

¹⁷ UMG Recordings, Inc. v. Augusto, 558 F. Supp. 2d 1055 (C.D. Cal. 2008), judgment aff'd, 628 F.3d 1175 (9th Cir. 2011) (applying California law).

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§ 5. Definition and scope; abandoned property; abandonment—In context of search or seizure

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West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  1, 1.1

Trial Strategy

[Lack of Probable Cause for Warrantless Arrest](#), 44 Am. Jur. Proof of Facts 2d 229

[Consent to Search Given Under Coercive Circumstances](#), 26 Am. Jur. Proof of Facts 2d 465

[Third Party's Lack of Authority to Consent to Search of Premises or Effects](#), 18 Am. Jur. Proof of Facts 2d 681

Forms

Warrantless search not incident to arrest—Search of residence while defendant held in custody at site of arrest: see Am. Jur. Pleading and Practice Forms, Searches and Seizures [\[WestlawNext®\(r\) Search Query\]](#)

Although the law of property asks whether the owner has voluntarily and intentionally relinquished his or her interest in the property, leaving it free to be appropriated by any other person,¹ under the law of search and seizure, the question is whether the defendant has, in discarding the property, relinquished his or her expectation of privacy with respect to the property so that neither search nor seizure is within the proscription of the Fourth Amendment.² That is, the test for “abandonment” in the context of the loss of standing to contest a search is whether the defendant retained any reasonable expectation of privacy in

the property.³ Thus, the test for abandonment in the search and seizure context is distinct from the property-law notion of abandonment.⁴ It is possible for a person to retain a property interest in an item but nonetheless to relinquish his or her reasonable expectation of privacy in the object.⁵

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Footnotes

¹ § 4.

² Long v. Dilling Mechanical Contractors, Inc., 705 N.E.2d 1022 (Ind. Ct. App. 1999); State v. Oquist, 327 N.W.2d 587 (Minn. 1982); Hamilton v. Harville, 63 Ohio App. 3d 27, 577 N.E.2d 1125 (12th Dist. Butler County 1989) (holding that one who acts to abandon property cannot claim a constitutional violation even if the act was done to avoid police action); State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995).
As to search and seizure of abandoned property or trash, generally, see Am. Jur. 2d, Searches and Seizures.[WestlawNext®(r) Search Query]

³ U.S. v. Mitchell, 429 F.3d 952 (10th Cir. 2005).

⁴ Long v. Dilling Mechanical Contractors, Inc., 705 N.E.2d 1022 (Ind. Ct. App. 1999).

⁵ Long v. Dilling Mechanical Contractors, Inc., 705 N.E.2d 1022 (Ind. Ct. App. 1999).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 6

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a. In General

§ 6. Property subject to abandonment

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West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  1, 1.1

Forms

Complaint, petition, or declaration—Allegation—Property as subject to abandonment: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [[WestlawNext® Search Query](#)]

Personal property of all kinds may be abandoned by the owner with a view of divesting him- or herself of title and ownership¹ provided the property is of such a character as to make it clear that it was voluntarily abandoned by the owner.² For example—

- equipment abandoned with an oil and gas lease becomes the lessor's property.³
- culm, coal-mining refuse, may be considered abandoned when left, with the intention of abandoning it, on another's land.⁴
- coal or coal by-products, when severed from the earth, become personal property which may be abandoned when left, with the intention of abandonment, on another's land.⁵
- severed earth materials, like topsoil or fill, are personal property which, if not removed from the owner's land, can be found to be intentionally abandoned.⁶

The doctrine of abandonment has also been applied to mining claims and water rights⁷ and to the interest acquired by a railroad company, under a land grant to it, for purposes of a right of way.⁸

When trash, whether it be documents or other discarded material, is placed in trash bags, and those trash bags are placed in an unlocked dumpster on the curtilage and readily accessible to others, that trash has been abandoned.⁹ Examples of res derelictae include items left on public highways or in the streets to be removed by garbage collectors.¹⁰

Title to real estate is not lost by abandonment¹¹ unless abandonment is accompanied by circumstances of estoppel and limitation.¹² Rather, the fee owner can be divested of title only through adverse possession.¹³ However, although at common law the doctrine of abandonment has no application to a fee simple,¹⁴ inchoate rights and equitable rights in land may be abandoned and so may mere possessory rights and rights acquired by a user of property.¹⁵

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Footnotes

- ¹ Standard Oil Co. v. State of N.J., by Parsons, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951) (stock certificates and unpaid dividends thereon); Columbus-America Discovery Group v. Atlantic Mut. Ins. Co., 974 F.2d 450, 24 Fed. R. Serv. 3d 14 (4th Cir. 1992) (sunken shipwreck); Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Raulston v. Everett, 561 S.W.2d 635 (Tex. Civ. App. Texarkana 1978) (membership rights in nonprofit corporation).
An individual may abandon his or her personal property. Ingram v. State, 261 S.W.3d 749 (Tex. App. Tyler 2008).
- ² Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012).
- ³ Shannon v. Stookey, 59 Ill. App. 3d 573, 16 Ill. Dec. 774, 375 N.E.2d 881 (5th Dist. 1978).
- ⁴ Universal Minerals, Inc. v. C. A. Hughes & Co., 669 F.2d 98 (3d Cir. 1981).
- ⁵ In re G.M.P. Land Co., 33 B.R. 729 (Bankr. E.D. Pa. 1983).
- ⁶ Toffolon v. Town of Avon, 173 Conn. 525, 378 A.2d 580 (1977).
- ⁷ Ellis v. Brown, 177 F.2d 677, 13 A.L.R.2d 945 (6th Cir. 1949) (mining rights and privileges).
As to abandonment of mines, generally, see Am. Jur. 2d, Mines and Minerals.[WestlawNext®(r) Search Query]
- ⁸ As to abandonment of interests acquired by railroads, see Am. Jur. 2d, Railroads §§ 51 to 56.
- ⁹ Ananda Church of Self-Realization v. Massachusetts Bay Ins. Co., 95 Cal. App. 4th 1273, 116 Cal. Rptr. 2d 370 (3d Dist. 2002); Long v. Dilling Mechanical Contractors, Inc., 705 N.E.2d 1022 (Ind. Ct. App. 1999).
- ¹⁰ Charrier v. Bell, 496 So. 2d 601 (La. Ct. App. 1st Cir. 1986), writ denied, 498 So. 2d 753 (La. 1986).
- ¹¹ Maroney v. City of Malvern, 320 Ark. 671, 899 S.W.2d 476 (1995); Countrywide Home Loans, Inc. v. Holland, 993 N.E.2d 184 (Ind. Ct. App. 2013); Town of Sedgwick v. Butler, 1998 ME 280, 722 A.2d 357 (Me. 1998); Denman v. Gans, 607 N.W.2d 788 (Minn. Ct. App. 2000); Pocono Springs Civic Ass'n, Inc. v. MacKenzie, 446 Pa. Super. 445, 667 A.2d 233 (1995); Dallas County City of Grand Prairie v. Sides, 430 S.W.3d 649 (Tex. App. Dallas 2014); In re Petition of Doering, 165 Vt. 603, 686 A.2d 101 (1996).
- ¹² Maroney v. City of Malvern, 320 Ark. 671, 899 S.W.2d 476 (1995).
- ¹³ In re Petition of Doering, 165 Vt. 603, 686 A.2d 101 (1996).
As to adverse possession of abandoned property, see Am. Jur. 2d, Adverse Possession.[WestlawNext®(r) Search Query]
- ¹⁴ Town of Sedgwick v. Butler, 1998 ME 280, 722 A.2d 357 (Me. 1998).
- ¹⁵ Fender v. Heirs at Law of Smashum, 354 S.C. 504, 581 S.E.2d 853 (Ct. App. 2003).

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 7

American Jurisprudence, Second Edition | May 2021 Update

Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

1. Abandoned Property

a. In General

§ 7. Property subject to abandonment—Statutory definitions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 1, 1.1

A.L.R. Library

[Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025](#)

[Validity, construction, and application of Abandoned Shipwreck Act of 1987 \(43 U.S.C.A. ss 2101 et seq\), 163 A.L.R. Fed. 421](#)

Forms

Complaint, petition, or declaration—Allegation—Property as subject to abandonment: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [[WestlawNext® Search Query](#)]

The Uniform Unclaimed Property Act defines “property” to mean certain tangible property or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder’s business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom.¹ It includes:²

(1) money, a check, draft, deposit, interest, or dividend;

- (2) a credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;
- (3) stock or other evidence of ownership of an interest in a business association or financial organization;
- (4) a bond, debenture, note, or other evidence of indebtedness;
- (5) money deposited to redeem stocks, bonds, coupons, or other securities or to make distributions;
- (6) an amount due and payable under the terms of an annuity or insurance policy; and
- (7) an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

The term "property," under certain unclaimed and abandoned property statutes, includes uncashed checks issued by an insurance company for insurance payments, agents' commissions, salaries, and vendor payments³ and instruments payable, drawn, or issued to bearer or cash.⁴

Observation:

Where the state's property code exempts this type of plan from the abandoned-property laws, prepaid funeral contracts that are protected by insurance or a fund, investment, debenture, security, or contract are not subject to the abandoned-property laws.⁵

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the definition of "property" is at Revised Uniform Unclaimed Property Act § 102(24)(2016) and refers, as its definition of "tangible property" to the tangible property described in Revised Uniform Unclaimed Property Act § 205(2016).

The Revised Uniform Unclaimed Property Act provides, in its definition of "property" in Revised Uniform Unclaimed Property Act § 102(24)(2016), that the term (A) includes all income from or increments to the property; (B) includes property referred to as or evidenced by: (i) money, virtual currency, interest, or a dividend, check, draft, deposit, or payroll card; (ii) a credit balance, customer's overpayment, stored-value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance; (iii) a security except for (I) a worthless security; or (II) a security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction restricts the holder's or owner's ability to receive, transfer, sell, or otherwise negotiate the security; (iv) a bond, debenture, note, or other evidence of indebtedness; (v) money deposited to redeem a security, make a distribution, or pay a dividend; (vi) an amount due and payable under an annuity contract or insurance policy; and (vii) an amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit-sharing, employee-savings, supplemental-employment insurance, or a similar benefit.

The Revised Uniform Unclaimed Property Act provides, in its definition of "property" in Revised Uniform Unclaimed Property Act § 102(24)(2016), that the term does not include (i) property held in a plan described in [26 U.S.C.A. § 529A](#); (ii)

game-related digital content; (iii) a loyalty card; (iv) an in-store credit for returned merchandise; or (v) a gift card.

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Unif. Unclaimed Property Act § 1\(13\) \(1995\).](#)
- ² [Uniform Unclaimed Property Act § 1\(13\) \(1995\).](#)
- ³ [Treasurer and Receiver General v. John Hancock Mut. Life Ins. Co., 388 Mass. 410, 446 N.E.2d 1376 \(1983\).](#)
- ⁴ [Fuentes v. Wendt, 106 Misc. 2d 1030, 436 N.Y.S.2d 801 \(Sup 1981\) \(under statute making such property returnable to the finder\).](#)
- ⁵ [Texas Dept. of Banking v. Mount Olivet Cemetery Ass'n, 27 S.W.3d 276 \(Tex. App. Austin 2000\).](#)

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 8

American Jurisprudence, Second Edition | May 2021 Update

Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

1. Abandoned Property

b. Elements of Abandonment

§ 8. Elements; act or omission

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  1 to 3

A.L.R. Library

Validity, construction, and application of Abandoned Shipwreck Act of 1987 (43 U.S.C.A. ss 2101 et seq), 163 A.L.R. Fed. 421

Forms

Instruction to jury—Elements of abandonment: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

The primary elements of an abandonment of property are the intention¹ to abandon and the external act or omission to act by which that intention is manifested or carried into effect.² “Abandonment” of property requires a manifest act,³ an unmistakable affirmative act,⁴ that expresses the intent of the owner to forsake his or her property. In other words, abandonment of property requires intent plus an act⁵ that effectuates the intention.⁶

An abandonment may arise from a single act or from a series of acts.⁷ The act or acts must be clear, unequivocal, and decisive.⁸ A sufficient act is one that manifests a conscious purpose and intention of the owner of personal property neither to

use nor to retake the property into his or her possession.⁹ The property rights must also be voluntarily relinquished.¹⁰

Observation:

The Uniform Unclaimed Property Act, which gives a state title to, or custody of, abandoned property, states generally that property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property.¹¹ Thus, under the Act, the abandonment of property may result from the owner's failure to bring an action for the recovery of the property within the stated time period.¹²

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Footnotes

¹ § 10.

² *Hunt v. DePuy Orthopaedics, Inc.*, 729 F. Supp. 2d 231 (D.D.C. 2010) (under District of Columbia law); *Johnson v. Northpointe Apartments*, 744 So. 2d 899 (Ala. 1999); *R.F. Daddario & Sons, Inc. v. Shelansky*, 123 Conn. App. 725, 3 A.3d 957 (2010); *Riverside Drainage Dist. of Sedgwick County v. Hunt*, 33 Kan. App. 2d 225, 99 P.3d 1135 (2004); *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644 (Me. 2001); *Long v. Noah's Lost Ark, Inc.*, 158 Ohio App. 3d 206, 2004-Ohio-4155, 814 N.E.2d 555 (7th Dist. Mahoning County 2004); *Buffalo Tp. v. Jones*, 571 Pa. 637, 813 A.2d 659 (2002); *Milligan v. Niebuhr*, 990 S.W.2d 823 (Tex. App. Austin 1999).
The act of abandonment must be an overt act or some failure to act which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. *Prue v. Royer*, 193 Vt. 267, 2013 VT 12, 67 A.3d 895 (2013).

³ *Schmidt v. Stearman*, 98 Ark. App. 167, 253 S.W.3d 35 (2007).

⁴ *UMG Recordings, Inc. v. Augusto*, 558 F. Supp. 2d 1055 (C.D. Cal. 2008), judgment aff'd, 628 F.3d 1175 (9th Cir. 2011) (applying California law); *Willcox v. Stroup*, 358 B.R. 824 (D.S.C. 2006), aff'd, 467 F.3d 409 (4th Cir. 2006) (applying South Carolina law).

⁵ *Jackson v. U.S.*, 526 F.3d 394 (8th Cir. 2008) (applying Missouri law); *Hunt v. DePuy Orthopaedics, Inc.*, 729 F. Supp. 2d 231 (D.D.C. 2010) (applying District of Columbia law; referring to act or omission).

⁶ *Hunt v. DePuy Orthopaedics, Inc.*, 729 F. Supp. 2d 231 (D.D.C. 2010) (applying District of Columbia law).

⁷ *UMG Recordings, Inc. v. Augusto*, 558 F. Supp. 2d 1055 (C.D. Cal. 2008), judgment aff'd, 628 F.3d 1175 (9th Cir. 2011) (applying California law); *Willcox v. Stroup*, 358 B.R. 824 (D.S.C. 2006), aff'd, 467 F.3d 409 (4th Cir. 2006) (applying South Carolina law); *Riverside Drainage Dist. of Sedgwick County v. Hunt*, 33 Kan. App. 2d 225, 99 P.3d 1135 (2004).

⁸ *In re Hansen*, 473 B.R. 240 (Bankr. E.D. Tenn. 2012) (applying Tennessee law); *Lewis v. Maine Coast Artists*, 2001 ME 75, 770 A.2d 644 (Me. 2001).

⁹ *Bruner v. Geneva County Forestry Dept.*, 865 So. 2d 1167 (Ala. 2003).
As to proof of abandonment, see §§ 55 to 58.

¹⁰ § 9.

¹¹ Unif. Unclaimed Property Act § 2(c) (1995).

¹² [Walden v. Jones, 252 Ga. App. 692, 556 S.E.2d 566 \(2001\).](#)

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 9

American Jurisprudence, Second Edition | May 2021 Update

Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

1. Abandoned Property

b. Elements of Abandonment

§ 9. Voluntaryness

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  1.1, 3

Trial Strategy

[Abandonment of Tangible Personal Property](#), 25 Am. Jur. Proof of Facts 2d 685

Forms

Complaint, petition, or declaration—Allegation—Intent to abandon property—As voluntary and unconditional: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

Reply—Allegation—Abandonment of property by owner was not voluntary: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

A claim of abandonment of property must be predicated upon an act voluntarily relinquishing property rights.¹ Abandonment must not be under threat, coercion, pressure, or misapprehension of any kind.² Likewise, in admiralty law, when a previous owner claims long-lost property that was involuntarily taken from his or her control, the law is hesitant to find an abandonment.³

Observation:

The the intent to abandon may be determined by the owner's act of voluntarily relinquishing all right, title, and interest in the property.⁴

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Footnotes

- ¹ Cerajeski v. Zoeller, 735 F.3d 577 (7th Cir. 2013) (applying Indiana law); Jackson v. U.S., 526 F.3d 394 (8th Cir. 2008) (applying Missouri law); Unit Petroleum Co. v. Veitch, 79 F. Supp. 3d 1234 (N.D. Okla. 2015); Strawberry Water Co. v. Paulsen, 220 Ariz. 401, 207 P.3d 654 (Ct. App. Div. 1 2008); Schmidt v. Stearman, 98 Ark. App. 167, 253 S.W.3d 35 (2007); Long v. Dilling Mechanical Contractors, Inc., 705 N.E.2d 1022 (Ind. Ct. App. 1999); Schoenholz v. Hinzman, 295 Kan. 786, 289 P.3d 1155 (2012); Greer v. Arroz, 330 S.W.3d 763 (Ky. Ct. App. 2011); Lewis v. Maine Coast Artists, 2001 ME 75, 770 A.2d 644 (Me. 2001); Rieman v. Anderson, 282 Mont. 139, 935 P.2d 1122 (1997); Mueller v. Bohannon, 256 Neb. 286, 589 N.W.2d 852 (1999); Susquehanna Area Regional Airport Authority v. Pennsylvania Public Utility Com'n, 911 A.2d 612 (Pa. Commw. Ct. 2006); Prue v. Royer, 193 Vt. 267, 2013 VT 12, 67 A.3d 895 (2013).
- ² Katsaris v. U.S., 684 F.2d 758 (11th Cir. 1982); State v. West, 293 N.C. 18, 235 S.E.2d 150 (1977).
- ³ Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel or Vessels, 221 F.3d 634 (4th Cir. 2000).
As to inference or presumption of abandonment, see §§ 56, 57.
- ⁴ Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995) (both logic and common sense suggest it is unlikely that someone would voluntarily part with over \$18,000 with the intention of terminating ownership).
As to proof of intent to abandon, see § 58.

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 10

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

1. Abandoned Property

b. Elements of Abandonment

§ 10. Intent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 2

Forms

Complaint, petition, or declaration—Allegations—Intent to abandon property: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

Instruction to jury—Elements of abandonment: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

In determining whether an owner has abandoned an interest in property, the focus is on the intent of the owner¹ because abandonment requires an intentional or deliberate action.² Generally, abandonment of property requires an intentional relinquishment of a known right.³ As sometimes stated, the intent to relinquish property permanently is an essential element to its abandonment.⁴ On the other hand, ignorance, inadvertence, or unawareness militate against a finding of abandonment.⁵ Likewise, there can be no abandonment if the person having the property is unaware of its existence.⁶

The intent to abandon is considered the first and paramount inquiry.⁷ However, if there is no expressed intent, the intent may be inferred from the acts of the owner when the facts justify it.⁸ While mere nonuse or lapse of time does not, in itself, constitute abandonment, they are competent evidence of an intent to abandon and as such may be entitled to great weight when considered with other circumstances.⁹

Caution:

There is some authority to the effect that the reasons for abandoning property, and the motives inducing the abandonment, are not elements or factors thereof, and in this sense, the abandoning owner's intention is not material.¹⁰ Under the Uniform Unclaimed Property Act, there is a presumption of an intent to abandon from the owner's failure to reclaim.¹¹ Additionally, where property is left in the possession of another with the owner's permission, the exercise of statutory rights by the person in possession in seeking payment from the owner for work performed on the property and the failure of the owner to reclaim the property do not evidence an intent to abandon the property by the owner.¹²

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Footnotes

- ¹ Prue v. Royer, 193 Vt. 267, 2013 VT 12, 67 A.3d 895 (2013).
- ² Enbridge Pipelines (Illinois) L.L.C. v. Moore, 633 F.3d 602 (7th Cir. 2011) (applying Illinois law); Susquehanna Area Regional Airport Authority v. Pennsylvania Public Utility Com'n, 911 A.2d 612 (Pa. Commw. Ct. 2006).
- ³ Cerro de Alcala Homeowners Assn. v. Burns, 169 Cal. App. 3d Supp. 1, 216 Cal. Rptr. 84 (App. Dep't Super. Ct. 1985); Kahr v. Markland, 187 Ill. App. 3d 603, 135 Ill. Dec. 196, 543 N.E.2d 579, 10 U.C.C. Rep. Serv. 2d 355 (4th Dist. 1989); Lewis v. Maine Coast Artists, 2001 ME 75, 770 A.2d 644 (Me. 2001); Mitteness v. Dahl, 351 N.W.2d 685 (Minn. Ct. App. 1984); Mueller v. Bohannon, 256 Neb. 286, 589 N.W.2d 852 (1999); Coburn v. Auto-Owners Ins. Co., 189 Ohio App. 3d 322, 2010-Ohio-3327, 938 N.E.2d 400 (10th Dist. Franklin County 2010); Com. v. \$7,000.00 in U.S. Currency, 742 A.2d 711 (Pa. Commw. Ct. 1999); City of Houston v. Van De Mark, 83 S.W.3d 864 (Tex. App. Texarkana 2002).
- ⁴ Kitchen v. Wachovia Bank & Trust Co., N.A., 44 N.C. App. 332, 260 S.E.2d 772 (1979).
- ⁵ Cerro de Alcala Homeowners Assn. v. Burns, 169 Cal. App. 3d Supp. 1, 216 Cal. Rptr. 84 (App. Dep't Super. Ct. 1985); Kahr v. Markland, 187 Ill. App. 3d 603, 135 Ill. Dec. 196, 543 N.E.2d 579, 10 U.C.C. Rep. Serv. 2d 355 (4th Dist. 1989); Mitteness v. Dahl, 351 N.W.2d 685 (Minn. Ct. App. 1984); Milligan v. Niebuhr, 990 S.W.2d 823 (Tex. App. Austin 1999).
As to the definition of abandonment of property, generally, see § 4.
- ⁶ Linscomb v. Goodyear Tire & Rubber Co., 199 F.2d 431 (8th Cir. 1952).
- ⁷ J.W.S. Delavau, Inc. v. Eastern America Transport & Warehousing, Inc., 2002 PA Super 336, 810 A.2d 672, 48 U.C.C. Rep. Serv. 2d 1296 (2002); Nelson v. Pacific County, 36 Wash. App. 17, 671 P.2d 785 (Div. 2 1983).
- ⁸ § 58.
- ⁹ § 59.
- ¹⁰ Herron v. Whiteside, 782 S.W.2d 414 (Mo. Ct. App. W.D. 1989).
- ¹¹ § 57.
- ¹² Pruitt v. LGR Trucking, Inc., 148 Ohio App. 3d 481, 2002-Ohio-722, 774 N.E.2d 273 (1st Dist. Hamilton County 2002).

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 11

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

1. Abandoned Property

b. Elements of Abandonment

§ 11. Concurrence of acts of relinquishment with intent

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  1 to 3

Forms

Instruction to jury—Elements of abandonment: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

Abandonment of property requires intent plus an act that effectuates the intention.¹ Indeed, there must be the concurrence of the intention to abandon and the actual relinquishment of the property.² While an abandonment may arise from a single act or from a series of acts,³ the intent to abandon and the act or acts of abandonment must conjoin and operate together,⁴ or there can be no abandonment.⁵

The moment the intention to abandon and the relinquishment of possession unite, the abandonment is complete,⁶ for time is not an essential element of abandonment.⁷

CUMULATIVE SUPPLEMENT

Cases:

Chapter 7 debtor, by failing to remove her personal property from her residence within 60 days of court order directing her to vacate the premises, which was to be sold by trustee, abandoned the personal property. [In re Broughton](#), 619 B.R. 596 (Bankr. E.D. N.C. 2020).

[END OF SUPPLEMENT]

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Footnotes

¹ § 8.

² [Whiskey Barrel Platers Co., Inc. v. American GardenWorks, Inc.](#), 966 N.E.2d 711 (Ind. Ct. App. 2012), transfer granted, opinion vacated, [IN RAP 58\(A\)](#), 974 N.E.2d 476 (Ind. 2012), order vacated, 976 N.E.2d 1227 (Ind. 2012) and opinion reinstated, 976 N.E.2d 1227 (Ind. 2012); [Herron v. Barnard](#), 390 S.W.3d 901 (Mo. Ct. App. W.D. 2013); [Ingram v. State](#), 261 S.W.3d 749 (Tex. App. Tyler 2008).
Abandonment in law depends upon concurrence of two and only two factors: (1) intention to abandon or relinquish; and (2) some overt act, or some failure to act, that carries implication that party abandoning neither claims nor retains any interest in subject matter of abandonment. [Starrett City, Inc. v. Smith](#), 25 Misc. 3d 42, 889 N.Y.S.2d 362 (App. Term 2009).

³ § 8.

⁴ [Johnson v. Smithsonian Inst.](#), 189 F.3d 180, 44 Fed. R. Serv. 3d 855 (2d Cir. 1999) (abandonment of property requires a confluence of intention and action by the owner).

⁵ [Rice Researchers, Inc. v. Hiter](#), 512 So. 2d 1259 (Miss. 1987); [Hoffman Management Corp. v. S.L.C. of North America, Inc.](#), 800 S.W.2d 755 (Mo. Ct. App. W.D. 1990).

⁶ [Herron v. Whiteside](#), 782 S.W.2d 414 (Mo. Ct. App. W.D. 1989).

⁷ [Pickens v. Johnson](#), 107 Cal. App. 2d 778, 238 P.2d 40 (3d Dist. 1951); [Holly Hill Lumber Co. v. Grooms](#), 198 S.C. 118, 16 S.E.2d 816 (1941); [Cottrell v. Daniel](#), 30 Tenn. App. 339, 205 S.W.2d 973 (1947).

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 12

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

1. Abandoned Property

b. Elements of Abandonment

§ 12. Effect of statute on common law elements

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  1 to 3

Forms

Instruction to jury—Elements of abandonment: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

The Uniform Unclaimed Property Act, which gives a state custody of abandoned property, states generally that property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property.¹

Abandonment of property to the United States Armed Forces occurs when either:

- (1) the owner cannot be identified within 45 days from the date of an investigation into the identity of the owner of the property, which in turn must commence within seven days after the property comes into the custody or control of the Department;² or
- (2) the owner is identified, but fails to claim the property within 45 days of being notified of the intended date of sale of the property.³

A federal statute also sets forth the elements of abandonment of a traveler's check or money order to the state, which defer to a great extent to the laws of escheat of the state in which the instrument was purchased.⁴

§ 12. Effect of statute on common law elements, 1 Am. Jur. 2d Abandoned, Lost, and...

Articles deposited at a trade fair in accordance with federal law and remaining after three months from the closing date of the trade fair are deemed mandatorily abandoned to the government.⁵

Federal property may be deemed abandoned by the Administrator of General Services where it is determined to have no commercial value or where it is determined that the continued cost of care and handling exceeds its estimated sale proceeds.⁶

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Footnotes

¹ Unif. Unclaimed Property Act § 2(c) (1995).

² 10 U.S.C.A. § 2575(a).

³ 10 U.S.C.A. § 2575(a).

⁴ 12 U.S.C.A. § 2503.

⁵ 19 U.S.C.A. § 1753.

⁶ 40 U.S.C.A. § 527.

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 13

American Jurisprudence, Second Edition | May 2021 Update

Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

2. Lost, Mislaid, and Other Types of Property; Distinctions

§ 13. Lost property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 10

A.L.R. Library

[Validity, construction, and application of Abandoned Shipwreck Act of 1987 \(43 U.S.C.A. ss 2101 et seq\), 163 A.L.R. Fed. 421](#)

Forms

Instruction to jury—Definition of “lost property”: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

“Lost property” is property which the owner has involuntarily parted with through neglect, carelessness, or inadvertence.¹ Lost property is property which the owner has unwittingly suffered to pass out of his or her possession, and of whose whereabouts the owner has no knowledge,² or property which has passed out of the owner’s possession unintentionally and involuntarily.³ Only if the owner parted with the possession of the property involuntarily and does not know thereafter where to find it may the property be deemed to be “lost property.”⁴

Goods or chattels are lost in the legal sense of the word only when possession has been casually and involuntarily parted with so that the mind has no impress of, and can have no recourse to, the event.⁵ Articles which are accidentally dropped in any

public place, public thoroughfare, or street are lost in the legal sense.⁶ If property is deliberately placed somewhere and then forgotten, it is not “lost.”⁷

Observation:

Even where statutes govern the rights of finders of lost property,⁸ such statutes apply only if the property discovered can be categorized as “lost” property as that term is defined under the common law.⁹

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Footnotes

- ¹ Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Morse v. Illinois Dept. of Professional Regulation, 316 Ill. App. 3d 664, 250 Ill. Dec. 56, 737 N.E.2d 678 (4th Dist. 2000); In re Funds in Possession of Conemaugh Tp. Sup’rs, 724 A.2d 990 (Pa. Commw. Ct. 1999), order aff’d, 562 Pa. 85, 753 A.2d 788 (2000); State v. \$281,420.00 in United States Currency, 312 S.W.3d 547 (Tex. 2010).
- ² Kahr v. Markland, 187 Ill. App. 3d 603, 135 Ill. Dec. 196, 543 N.E.2d 579, 10 U.C.C. Rep. Serv. 2d 355 (4th Dist. 1989); State v. Kealey, 80 Wash. App. 162, 907 P.2d 319 (Div. 2 1995), as amended on denial of reconsideration, (Feb. 26, 1996).
- ³ Morse v. Illinois Dept. of Professional Regulation, 316 Ill. App. 3d 664, 250 Ill. Dec. 56, 737 N.E.2d 678 (4th Dist. 2000); Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
- ⁴ Franks v. Pritchett, 88 Ark. App. 243, 197 S.W.3d 5 (2004).
- ⁵ Bruner v. Geneva County Forestry Dept., 865 So. 2d 1167 (Ala. 2003).
- ⁶ Ray v. Flower Hosp., 1 Ohio App. 3d 127, 439 N.E.2d 942 (6th Dist. Lucas County 1981).
- ⁷ In re Funds in Possession of Conemaugh Tp. Sup’rs, 724 A.2d 990 (Pa. Commw. Ct. 1999), order aff’d, 562 Pa. 85, 753 A.2d 788 (2000).
As to mislaid property, see § 15.
- ⁸ § 32.
- ⁹ § 3.

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 14

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

2. Lost, Mislaid, and Other Types of Property; Distinctions

§ 14. Lost property—Particular types of property as lost

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 10

A.L.R. Library

[Landlord's permitting third party to occupy premises rent-free as acceptance of tenant's surrender of premises, 18 A.L.R.5th 437](#)

Generally, stolen property found by persons not associated with the taking has been classified as lost in regards to the actual owner.¹ Thus, stolen stock certificates and United States savings bonds are not lost property.²

The term “lost,” as used in statutes dealing with lost or abandoned property, has been construed to include currency discovered on the seat of a chair in an examination booth in a safety deposit vault³ or a cache of money which was discovered by a tenant in the midst of pieces of wood and other debris in the house’s basement.⁴ On the other hand, gold coins placed in a glass jar and buried in the ground are not lost.⁵ Similarly, where money is found wrapped and concealed in an airplane wing, the circumstances do not support a conclusion that the money was placed in the wing of the airplane unintentionally as necessary for the money to be considered “lost property.”⁶

Observation:

Where weapons found in a stolen car were not subject to statutory condemnation, the weapons could be deemed lost property.⁷

§ 14. Lost property—Particular types of property as lost, 1 Am. Jur. 2d Abandoned,...

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Footnotes

- ¹ Frederick v. State, 719 So. 2d 233 (Ala. Civ. App. 1998); Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980); Matter of Unknown Silver Coins, 418 N.W.2d 317 (S.D. 1988).
- ² De Young v. Foster, 239 Iowa 762, 32 N.W.2d 664 (1948) (as the certificates and bonds only represented the obligation on the part of the issuers to pay the holders, and the right of the holders to be paid had not been affected by the theft of the paper in question, the finder had not found anything that was truly lost).
- ³ Paset v. Old Orchard Bank & Trust Co., 62 Ill. App. 3d 534, 19 Ill. Dec. 389, 378 N.E.2d 1264 (1st Dist. 1978).
- ⁴ Eldridge v. Herman, 291 N.W.2d 319 (Iowa 1980).
- ⁵ Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).
- ⁶ Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
- ⁷ Frederick v. State, 719 So. 2d 233 (Ala. Civ. App. 1998).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 15

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

2. Lost, Mislaid, and Other Types of Property; Distinctions

§ 15. Mislaid property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 10

"Mislaid property" is that which is intentionally put into a certain place and later forgotten.¹ The place where property was found, the length of time property remained unclaimed, and the surrounding circumstances are all evidence as to whether the item was or was not dropped by inadvertence, negligence, or carelessness, which factors tend to establish that the property in question has been mislaid rather than lost.²

Examples of property that is mislaid rather than lost include—

- an eyeglass case containing jewels laid on top of a hospital information desk, where evidence that the case was not dropped by inadvertence, negligence, or carelessness tends to establish that the property in question was mislaid rather than lost.³
- old, dusty currency found by motel renovators in a cardboard box concealed in a ceiling.⁴
- bills carefully tied and wrapped and then concealed in a location in an airplane wing that was accessible only by removing the screws and a panel.⁵
- gold coins placed in a glass jar and buried in the ground.⁶
- currency totaling \$281,420 that was found in various denominations in tightly wrapped bundles in the axle of a disabled truck.⁷
- money an original homeowner hid in the walls of his home, found by a remodeling contractor after the home had been sold, even though it remained undiscovered for nearly seven years.⁸

On the other hand, money found in a basement, in the midst of pieces of weathered debris cluttered with junk, not well hidden or secure, and where the putative owner did nothing to take it or protect it, despite knowing that the basement was being cleaned, was lost, not mislaid, property.⁹

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Footnotes

- ¹ Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980); State v. Green, 456 So. 2d 1309 (Fla. 3d DCA 1984); Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995); In re Funds in Possession of Conemaugh Tp. Sup'rs, 724 A.2d 990 (Pa. Commw. Ct. 1999), order aff'd, 562 Pa. 85, 753 A.2d 788 (2000); State v. \$281,420.00 in United States Currency, 312 S.W.3d 547 (Tex. 2010); State v. Kealey, 80 Wash. App. 162, 907 P.2d 319 (Div. 2 1995), as amended on denial of reconsideration, (Feb. 26, 1996).
- ² Ray v. Flower Hosp., 1 Ohio App. 3d 127, 439 N.E.2d 942 (6th Dist. Lucas County 1981).
- ³ Ray v. Flower Hosp., 1 Ohio App. 3d 127, 439 N.E.2d 942 (6th Dist. Lucas County 1981).
- ⁴ Terry v. Lock, 343 Ark. 452, 37 S.W.3d 202 (2001).
- ⁵ Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
- ⁶ Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).
- ⁷ State v. \$281,420.00 in United States Currency, 312 S.W.3d 547 (Tex. 2010).
- ⁸ Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012).
- ⁹ Eldridge v. Herman, 291 N.W.2d 319 (Iowa 1980).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 16

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

2. Lost, Mislaid, and Other Types of Property; Distinctions

§ 16. Treasure trove

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 10

According to the common law, “treasure trove” is any gold or silver in coin, plate, or bullion,¹ whose owner is unknown, found concealed in the earth or in a house or other private place² but not lying on the ground.³ “Treasure trove” refers to valuables buried on the land of another.⁴

Where the common law treasure trove doctrine has been applied to determine the ownership of a find, property considered as treasure trove has included gold or silver coin,⁵ plate,⁶ or bullion,⁷ and its paper representatives,⁸ buried in the earth⁹ or hidden in some other private place, including a mattress,¹⁰ a cabinet sink,¹¹ a piano,¹² or a ball of rags.¹³

Caution:

Some states have never officially recognized the doctrine of treasure trove.¹⁴

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Footnotes

¹ [Favorite v. Miller](#), 176 Conn. 310, 407 A.2d 974 (1978) (holding that since a fragment of the statue recovered by the defendant was of gilded lead, he could not make claim that the fragment constituted treasure trove); [Zech v. Accola](#), 253 Wis. 80, 33 N.W.2d 232 (1948).

- ² Franks v. Pritchett, 88 Ark. App. 243, 197 S.W.3d 5 (2004); Favorite v. Miller, 176 Conn. 310, 407 A.2d 974 (1978); Zech v. Accola, 253 Wis. 80, 33 N.W.2d 232 (1948).
- ³ Franks v. Pritchett, 88 Ark. App. 243, 197 S.W.3d 5 (2004); Zech v. Accola, 253 Wis. 80, 33 N.W.2d 232 (1948).
- ⁴ Martin v. Moore, 109 S.W.3d 305 (Tenn. Ct. App. 2003).
- ⁵ Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001); Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).
- ⁶ Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).
- ⁷ Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).
- ⁸ Franks v. Pritchett, 88 Ark. App. 243, 197 S.W.3d 5 (2004) (referring to money); Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980) (paper currency); Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).
- ⁹ Davison v. Strickland, 145 Ga. App. 420, 243 S.E.2d 705 (1978) (buried under or hidden in chimney hearth); Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985) (buried in ground).
- ¹⁰ U.S. v. Peter, 178 F. Supp. 854 (E.D. La. 1959), judgment aff'd, 283 F.2d 696 (5th Cir. 1960).
- ¹¹ Hurley v. City of Niagara Falls, 30 A.D.2d 89, 289 N.Y.S.2d 889 (4th Dep't 1968), judgment aff'd, 25 N.Y.2d 687, 306 N.Y.S.2d 689, 254 N.E.2d 917 (1969).
- ¹² Cesarini v. U.S., 296 F. Supp. 3, 18 Ohio Misc. 1, 47 Ohio Op. 2d 27 (N.D. Ohio 1969), judgment aff'd, 428 F.2d 812 (6th Cir. 1970).
- ¹³ Zech v. Accola, 253 Wis. 80, 33 N.W.2d 232 (1948).
- ¹⁴ Schley v. Couch, 155 Tex. 195, 284 S.W.2d 333 (1955).

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

I. In General

B. Nature and Scope; Definitions

2. Lost, Mislaid, and Other Types of Property; Distinctions

§ 17. Treasure trove—Effect of length of time hidden

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 10

A.L.R. Library

[Validity, construction, and application of Abandoned Shipwreck Act of 1987 \(43 U.S.C.A. ss 2101 et seq\), 163 A.L.R. Fed. 421](#)

“Treasure trove” includes an element of antiquity.¹ To be classed as treasure trove, the treasure must be verifiably antiquated² and must have been hidden or concealed so long as to indicate that the owner is probably dead or unknown.³ Treasure trove includes property hidden less than 70 years⁴ while property buried clearly less than a year is too recently hidden.⁵ Where money was hidden no longer than 35 years, it does not meet the “antiquity” requirement.⁶

Proof of the age of found property may include the dates stamped or printed on coins⁷ or paper money.⁸ Evidence of the length of time that property has been hidden may include—

- that its possession has been illegal since a certain date.⁹
- that its container has rusted to disintegration.¹⁰
- that its place of concealment was constructed on a certain date.¹¹
- that it was buried in ground that allegedly did not indicate recent digging.¹²

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Footnotes

¹ [Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 \(Ct. App. 2001\); Benjamin v. Lindner Aviation, Inc., 534 N.W.2d](#)

400 (Iowa 1995).

Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012).

Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Franks v. Pritchett, 88 Ark. App. 243, 197 S.W.3d 5 (2004); Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980); State v. Green, 456 So. 2d 1309 (Fla. 3d DCA 1984); Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001); Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995); Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).

Davison v. Strickland, 145 Ga. App. 420, 243 S.E.2d 705 (1978).

Hill v. Schrunck, 207 Or. 71, 292 P.2d 141 (1956).

Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).

Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).

Hill v. Schrunck, 207 Or. 71, 292 P.2d 141 (1956).

U.S. v. Peter, 178 F. Supp. 854 (E.D. La. 1959), judgment aff'd, 283 F.2d 696 (5th Cir. 1960).

Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).

Davison v. Strickland, 145 Ga. App. 420, 243 S.E.2d 705 (1978).

Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 18

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Abandoned, Lost, and Unclaimed Property

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2. Lost, Mislaid, and Other Types of Property; Distinctions

§ 18. Property embedded in earth; archaeological resources

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 10

"Property embedded in the earth" is personal property that has become a part of the natural earth.¹ It includes anything other than gold or silver which is so buried² and is distinguished, in this respect, from "treasure trove."³ However, gold coins placed in a glass jar and buried in the ground have been classified as embedded property.⁴

Objects placed in this class include—

- a meteorite.⁵
- a prehistoric boat.⁶
- the sunken wreck of a steamship.⁷
- valuable pottery or earthenware.⁸
- gold-bearing quartz found embedded in the soil under circumstances indicating that some person had placed it where it was found,⁹ such as a rotting away sack of fold-bearing quartz rock buried in the ground.¹⁰

Property need not be totally buried to satisfy the embeddedness requirement.¹¹

The Federal Archaeological Resources Protection Act (ARPA)¹² does not authorize private individuals to remove coins less than 100 years old from public land and retain ownership, nor does the statute divest the United States of ownership, but rather, the statute simply does not regulate the private collection of such nonarchaeological resources.¹³

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Footnotes

¹ Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).

² Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).

3 §§ 16, 19.

4 *Corliss v. Wenner*, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).

5 *Ritz v. Selma United Methodist Church*, 467 N.W.2d 266 (Iowa 1991).

6 *Ritz v. Selma United Methodist Church*, 467 N.W.2d 266 (Iowa 1991); *Allred v. Biegel*, 240 Mo. App. 818, 219 S.W.2d 665 (1949) (ancient Indian canoe embedded in river bank).

7 *Corliss v. Wenner*, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).

8 *Corliss v. Wenner*, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001); *Ritz v. Selma United Methodist Church*, 467 N.W.2d 266 (Iowa 1991); *Burdick v. Chesebrough*, 94 A.D. 532, 88 N.Y.S. 13 (3d Dep't 1904).

9 *Corliss v. Wenner*, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001); *Ritz v. Selma United Methodist Church*, 467 N.W.2d 266 (Iowa 1991).

10 *Corliss v. Wenner*, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001).

11 *Chance v. Certain Artifacts Found and Salvaged from The Nashville*, 606 F. Supp. 801 (S.D. Ga. 1984), judgment *aff'd*, 775 F.2d 302 (11th Cir. 1985).

12 16 U.S.C.A. §§ 470kk, 470kk(b).

13 *U.S. v. Shivers*, 96 F.3d 120 (5th Cir. 1996).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 19

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I. In General

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2. Lost, Mislaid, and Other Types of Property; Distinctions

§ 19. Distinctions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  1.1, 10

Of the four common law categories of “found property”—abandoned property, lost property, mislaid property, and treasure trove¹—only lost property involves an element of involuntariness.² The three remaining categories involve voluntary and intentional acts by the true owner in placing the property where it is eventually found by another.³

Treasure trove differs from lost property in that property is not lost unless the owner parted with it involuntarily while it is essential to the character of treasure trove that it shall have been concealed by the original owner for safekeeping.⁴ Treasure trove is a special category, which cannot be said to be lost or mislaid property, because the owner’s intent was obviously to put it in a safe place.⁵

Observation:

One court has stated that, by definition, the concepts of abandonment and bailment of property cannot coexist.⁶ “Abandonment” is a relinquishment of the owner’s legal right to a thing while bailment requires an owner of the object (the bailor) and a possessor (the bailee).⁷

- ¹ § 1.
- ² Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).
- ³ Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).
- ⁴ Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985); Zech v. Accola, 253 Wis. 80, 33 N.W.2d 232 (1948).
- ⁵ Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).
- ⁶ Meeks ex rel. Estate of Meeks v. Florida Power & Light Co., 816 So. 2d 1125 (Fla. 5th DCA 2002), decision approved, 863 So. 2d 287 (Fla. 2003).
- ⁷ Meeks ex rel. Estate of Meeks v. Florida Power & Light Co., 816 So. 2d 1125 (Fla. 5th DCA 2002), decision approved, 863 So. 2d 287 (Fla. 2003).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property II A Refs.

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Abandoned, Lost, and Unclaimed Property

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II. Rights and Obligations of Finders, Owners, and Former Owners

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#) 🔑 5, 10 to 12

A.L.R. Library

A.L.R. Index, Abandonment of Property or Right

A.L.R. Index, Lost Property

A.L.R. Index, Personal Property

A.L.R. Index, Title and Ownership

A.L.R. Index, Treasure Trove

West's A.L.R. Digest, [Abandoned and Lost Property](#) 🔑 5, 10 to 12

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 20

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Abandoned, Lost, and Unclaimed Property

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II. Rights and Obligations of Finders, Owners, and Former Owners

A. In General

§ 20. Character of property as determinative; time of fixing rights

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 10 to 12

A finder's rights depend on how the found property is classified.¹ The character of the property should be determined by evaluating all the facts and circumstances present in the particular case.²

Observation:

Where statutes govern the rights of finders of certain classes of property, such as lost or abandoned property, then the rights of finders of these classes of property continue to vary according to the characterization of the property found.³ Additionally, because such statutes apply only to limited classes of found property, they do not abrogate the common law classifications of found property.⁴

The rights of a person who finds property, and of any person other than the true owner who claims it, are fixed at the time of the finding.⁵ The fact that the owner cannot be found does not affect the status of either party as to the right of possession at that time.⁶

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Footnotes

¹ [Grande v. Jennings](#), 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); [Terry v. Lock](#), 343 Ark. 452, 37 S.W.3d 202 (2001); [Benjamin v. Lindner Aviation, Inc.](#), 534 N.W.2d 400 (Iowa 1995).
As to classifications of property, see §§ 13 to 19.

§ 20. Character of property as determinative; time of fixing rights, 1 Am. Jur. 2d...

² Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Terry v. Lock, 343 Ark. 452, 37 S.W.3d 202 (2001).

³ Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
As to statutes as determinative, see § 21.

⁴ Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).

⁵ Foster v. Fidelity Safe Deposit Co., 264 Mo. 89, 174 S.W. 376 (1915); Toledo Trust Co. v. Simmons, 52 Ohio App. 373, 6 Ohio Op. 388, 21 Ohio L. Abs. 624, 3 N.E.2d 661 (6th Dist. Lucas County 1935).

⁶ Foster v. Fidelity Safe Deposit Co., 264 Mo. 89, 174 S.W. 376 (1915).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 21

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Abandoned, Lost, and Unclaimed Property

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II. Rights and Obligations of Finders, Owners, and Former Owners

A. In General

§ 21. Statute as determinative

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 10 to 13

A.L.R. Library

[Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025](#)

A statute may deem the finder of tangible personal property to be the sole owner if the property is unclaimed for a stated period, such as six months¹ or one year.² This type of statute focuses on the status of the finder without regard to the character of the property as lost, mislaid, or abandoned.³ Such a statute applies to cash that an insane owner left on the finders' doorstep in response to a delusion that the finder was aiming a satellite at her home even if the money was not lost or abandoned.⁴ The statute focuses on the status of the finder without regard to whether the property was lost, mislaid, or abandoned.⁵

Caution:

The enactment of statutes governing abandoned and lost property may define the rights of the finders of each of these classes of property so that the determination of rights does vary according to the characterization of the property found.⁶ In this regard, a restrictive view of lost-property statutes is taken.⁷

The Federal Archaeological Resources Protection Act⁸ does not confer to private collectors ownership of nonarchaeological

resources that they discover on public lands; instead, the federal common law of finds still applies.⁹

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Footnotes

- ¹ [Ho v. Rubin](#), 333 N.J. Super. 599, 756 A.2d 643 (Ch. Div. 1999), *aff'd*, 333 N.J. Super. 580, 756 A.2d 633 (App. Div. 2000).
- ² [Campbell v. Cochran](#), 416 A.2d 211 (Del. Super. Ct. 1980) (police informer who discovered money was entitled to possession after one year).
- ³ [Ho v. Rubin](#), 333 N.J. Super. 599, 756 A.2d 643 (Ch. Div. 1999), *aff'd*, 333 N.J. Super. 580, 756 A.2d 633 (App. Div. 2000).
- ⁴ [Ho v. Rubin](#), 333 N.J. Super. 599, 756 A.2d 643 (Ch. Div. 1999), *aff'd*, 333 N.J. Super. 580, 756 A.2d 633 (App. Div. 2000).
- ⁵ [Ho v. Rubin](#), 333 N.J. Super. 599, 756 A.2d 643 (Ch. Div. 1999), *aff'd*, 333 N.J. Super. 580, 756 A.2d 633 (App. Div. 2000).
- ⁶ [§ 20](#).
- ⁷ [Benjamin v. Lindner Aviation, Inc.](#), 534 N.W.2d 400 (Iowa 1995).
- ⁸ [16 U.S.C.A. § 470kk\(b\)](#).
- ⁹ [U.S. v. Shivers](#), 96 F.3d 120 (5th Cir. 1996).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 22

American Jurisprudence, Second Edition | May 2021 Update

Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

II. Rights and Obligations of Finders, Owners, and Former Owners

A. In General

§ 22. What constitutes “finder”

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West’s Key Number Digest

West’s Key Number Digest, [Abandoned and Lost Property](#)  5, 10 to 13

Abandoned property is no person’s property¹ until reduced to possession with the intent to acquire title.² Thus, in order to obtain the rights of a finder, one must “take charge” of it.³

Caution:

Status as a finder has been extended in some circumstances to instances where the finder does not intend to take ownership of the property as in the instance of a garbage hauler who takes possession of garbage left on the curb for collection.⁴

One who has never been in either actual or constructive possession of found property cannot be considered a finder.⁵ A demonstration of possession and control of abandoned property is a prerequisite to an award of title under the law of finds⁶ as a finder acquires title to abandoned property by “occupancy,” that is, by taking possession of the property and exercising dominion and control over it.⁷

A co-owner of a company that is a mere bailee of the property cannot acquire ownership rights to found property by virtue of its abandonment by the company.⁸

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Footnotes

§ 22. What constitutes “finder”, 1 Am. Jur. 2d Abandoned, Lost, and Unclaimed...

- ¹ [Quinn v. Young](#), 780 F.3d 998 (10th Cir. 2015) (applying New Mexico law); [Hawkins v. Mahoney](#), 1999 MT 296, 297 Mont. 98, 990 P.2d 776 (1999); [Ingram v. State](#), 261 S.W.3d 749 (Tex. App. Tyler 2008).
- ² [Hawkins v. Mahoney](#), 1999 MT 296, 297 Mont. 98, 990 P.2d 776 (1999); [Ingram v. State](#), 261 S.W.3d 749 (Tex. App. Tyler 2008).
One who seeks to acquire abandoned property must take possession of the property with an intent to acquire title. [State v. \\$281,420.00 in United States Currency](#), 312 S.W.3d 547 (Tex. 2010).
- ³ [Powell v. Four Thousand Six Hundred Dollars \(\\$4,600.00\) U.S. Currency](#), 1995 OK CIV APP 87, 904 P.2d 153 (Ct. App. Div. 1 1995) (passersby who spotted abandoned money in street “took charge” of it, and so acquired the rights of a “finder,” where the passersby notified the police of money, returned to the place of discovery to prevent third persons from interfering with its recovery, and left it on the ground at a deputy’s direction in order to preserve its evidentiary value).
- ⁴ [Meyer Waste Systems, Inc. v. Indiana Dept. of State Revenue](#), 741 N.E.2d 1 (Ind. Tax Ct. 2000) (despite the contention that it was merely providing a public transportation service and that assuming ownership served no business purpose and would cause the hauler to incur additional liability).
- ⁵ [Morgan and Bros. Manhattan Storage Co., Inc. v. McGuire](#), 114 Misc. 2d 951, 452 N.Y.S.2d 986 (Sup 1982), order modified on other grounds, 97 A.D.2d 695, 468 N.Y.S.2d 331 (1st Dep’t 1983).
- ⁶ [Indian River Recovery Co. v. The China](#), 645 F. Supp. 141 (D. Del. 1986).
- ⁷ [Klein v. Unidentified, Wrecked and Abandoned Sailing Vessel](#), 568 F. Supp. 1562 (S.D. Fla. 1983), decision aff’d, 758 F.2d 1511 (11th Cir. 1985).
- ⁸ [Simmons v. Safir](#), 276 A.D.2d 544, 713 N.Y.S.2d 771 (2d Dep’t 2000).

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 23

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II. Rights and Obligations of Finders, Owners, and Former Owners

A. In General

§ 23. Property embedded in earth

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 10 to 13

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[Modern status of rules as to ownership of treasure trove as between finder and owner of property on which found, 61 A.L.R.4th 1180](#)

Property which has become a part of the natural earth is not subject to the general rule of lost¹ or mislaid property,² treasure trove,³ or the common law of finds.⁴ Rather, such property belongs to the owner of the real estate upon which it is found.⁵ Examples of this type of property are a meteorite, a prehistoric boat, valuable earthenware, and gold-bearing quartz.⁶ A person who finds property which is embedded in the soil but which is not treasure trove⁷ acquires no title thereto, for the presumption is that the possession of the article found is in the owner of the land.⁸

When personalty is found embedded in land, title to that personalty rests with the owner of the land.⁹ The basis of the rule is that a wrongdoer should not be allowed to profit by his or her wrongdoing, that is, except for the trivial or merely technical trespass, the fact that the finder was trespassing is sufficient to deprive him or her of the normal preference over the owner of the place where the property was found.¹⁰

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Footnotes

¹ §§ 29 to 32.

² [Ritz v. Selma United Methodist Church, 467 N.W.2d 266 \(Iowa 1991\).](#)

As to rights of finders of mislaid property, generally, see §§ 36, 38.

§ 23.

Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs, 2015 WL 1471267 (M.D. Ga. 2015); Northeast Research, LLC v. One Shipwrecked Vessel, her Tackle, Equipment, Appurtenances, Cargo, 790 F. Supp. 2d 56 (W.D. N.Y. 2011), judgment aff'd, 729 F.3d 197 (2d Cir. 2013); Smith v. The Abandoned Vessel, 610 F. Supp. 2d 739 (S.D. Tex. 2009).

Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs, 2015 WL 1471267 (M.D. Ga. 2015); Northeast Research, LLC v. One Shipwrecked Vessel, her Tackle, Equipment, Appurtenances, Cargo, 790 F. Supp. 2d 56 (W.D. N.Y. 2011), judgment aff'd, 729 F.3d 197 (2d Cir. 2013); Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Ritz v. Selma United Methodist Church, 467 N.W.2d 266 (Iowa 1991).

§ 18.

§§ 40, 41.

Chance v. Certain Artifacts Found and Salvaged from The Nashville, 606 F. Supp. 801 (S.D. Ga. 1984), judgment aff'd, 775 F.2d 302 (11th Cir. 1985); Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001); Meyers v. Meyers, 368 N.W.2d 391 (Minn. Ct. App. 1985); Allred v. Biegel, 240 Mo. App. 818, 219 S.W.2d 665 (1949); Schley v. Couch, 155 Tex. 195, 284 S.W.2d 333 (1955).

Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001); Meyers v. Meyers, 368 N.W.2d 391 (Minn. Ct. App. 1985).

Favorite v. Miller, 176 Conn. 310, 407 A.2d 974 (1978) (noting it was necessary for the finder to excavate to find the embedded property).

As to the normal preference of the finder over the owner of the premises, see abandoned property, § 28.

As to the normal preference of the finder over the owner of the premises, see lost property, § 29.

As to the normal preference of the finder over the owner of the premises, see treasure trove, § 40.

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 24

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II. Rights and Obligations of Finders, Owners, and Former Owners

A. In General

§ 24. Reimbursement for finder's expenses; rewards

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 10 to 13

By statute, in some states, the finder of lost property is entitled to compensation for expenses necessarily incurred in its preservation and for any other service necessarily performed.¹ The Uniform Unclaimed Property Act specifically addresses the issue of reimbursement by permitting the holder to deduct from property presumed abandoned a charge for the owner's failure to claim it within the statutory period provided that there is a written contract between the holder and the owner and provided that the charge is not unconscionable.²

Caution:

A finder's fee contract between the finder and the claimant, under which the finder is to be paid a fee calculated as a percentage of the value of the property recovered, will be deemed illegal and unenforceable where the fee designated is in excess of the maximum fee permissible under an applicable abandoned-property statute and the property otherwise qualifies as abandoned property.³

In the absence of a statute which imposes a duty upon the owner of lost property to reward the finder,⁴ or in the absence of a voluntary reward by the owner,⁵ the finder has no right to a reward and, thus, no lien on the property. However, a person is entitled to a reward for returning lost property when he or she has lawfully come into possession of that property by seeking the property in reliance upon a reward previously offered, or already lawfully in possession of the property, he or she responds to a reward offer initiated by the owner.⁶ Nevertheless, finders of lost property may not hold the property until an offer of a reward is made and cannot solicit a reward as a condition of returning the property.⁷

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding a dormancy charge are at Revised Uniform Unclaimed Property Act § 602(2016). Revised Uniform Unclaimed Property Act § 602(a)(2016) allows the holder to deduct a dormancy charge if (1) a valid contract between the holder and the apparent owner authorizes the imposition of the charge for the apparent owner's failure to claim the property within a specified time and (2) the holder regularly imposes the charge and regularly does not reverse or otherwise cancel the charge. Revised Uniform Unclaimed Property Act § 602(b)(2016) provides that the amount of the dormancy charge is limited to an amount that is not unconscionable considering all relevant factors, including the marginal transactional costs incurred by the holder in maintaining the apparent owner's property and any services received by the apparent owner.

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Moral Ins. Co. v. Cooksey](#), 1955 OK 179, 285 P.2d 223 (Okla. 1955); [Matter of Unknown Silver Coins](#), 418 N.W.2d 317 (S.D. 1988).
- ² [Unif. Unclaimed Property Act § 5](#) (1995).
- ³ [Eason v. Calvert](#), 902 S.W.2d 160 (Tex. App. Houston 1st Dist. 1995), writ denied, (Jan. 11, 1996) (statute limiting finder's fee for abandoned property to 10% of the property governed instead of contractual provision for a fee of 40% of the property value).
- ⁴ [Automobile Ins. Co. of Hartford, Conn. v. Kirby](#), 25 Ala. App. 245, 144 So. 123 (1932) (lost-goods statute did not require the payment of a reward to the finder of the property).
- ⁵ [State v. Couch](#), 250 Iowa 56, 92 N.W.2d 580 (1958); [Matter of Unknown Silver Coins](#), 418 N.W.2d 317 (S.D. 1988).
- ⁶ [People v. Dadon](#), 167 Misc. 2d 628, 640 N.Y.S.2d 425 (N.Y. City Crim. Ct. 1996).
- ⁷ [People v. Dadon](#), 167 Misc. 2d 628, 640 N.Y.S.2d 425 (N.Y. City Crim. Ct. 1996).
As to rewards, generally, see Am. Jur. 2d, Rewards. [[WestlawNext®\(r\) Search Query](#)]

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property II B Refs.

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A.L.R. Index, Abandonment of Property or Right

A.L.R. Index, Personal Property

A.L.R. Index, Title and Ownership

West's A.L.R. Digest, Abandoned and Lost Property  5

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 25

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II. Rights and Obligations of Finders, Owners, and Former Owners

B. Abandoned Property

§ 25. Finders

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West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5

A.L.R. Library

[Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025](#)

Forms

Abandoned and Unclaimed Property—Property in Custody of Carrier, Innkeeper, etc.: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

Complaint, petition, or declaration—For determination of adverse claims to allegedly abandoned property—By holder against former owner: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

The principle of common law abandonment allows a finder to claim possession of abandoned property.¹ Thus, property which is abandoned becomes subject to appropriation by the first taker² or finder who reduces it to possession.³

A finder does not acquire title merely by the strength of his or her discovery of abandoned property.⁴ One who seeks to acquire abandoned property must take possession of the property with an intent to acquire title.⁵ Stated another way, title to abandoned personal property vests in the first person lawfully reducing the same to possession.⁶

To establish a claim under the law of finds, a common law doctrine,⁷ a finder must show:⁸

- (1) intent to reduce property to possession,
- (2) actual or constructive possession of the property, and
- (3) that the property is either unowned or abandoned.

The law of finds dictates that the finder of abandoned property must continuously possess, or be in the process of reducing to possession, the property which he or she has found.⁹ The law, however, does not require one who discovers abandoned property to have it actually in hand.¹⁰ The law protects the rights of persons who discover abandoned property, and who are actually engaged in reducing it to possession, to complete this project without interference.¹¹ The law of finds also dictates that the prerequisites for divesting title must be satisfied.¹²

Observation:

Under the law of finds, the finder of abandoned property cannot exclude others from attempting to reduce discovered property to possession.¹³

In some jurisdictions, carriers are authorized by statute to sell unclaimed freight, baggage, or other personal property, under specified conditions.¹⁴

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Footnotes

- ¹ [Unit Petroleum Co. v. Veitch](#), 79 F. Supp. 3d 1234 (N.D. Okla. 2015).
- ² [The Mary](#), 15 U.S. 123, 4 L. Ed. 200, 1817 WL 2013 (1817); [Jackson v. U.S.](#), 526 F.3d 394 (8th Cir. 2008) (applying Missouri law); [Quinn v. Young](#), 780 F.3d 998 (10th Cir. 2015) (applying New Mexico law); [Terry v. Lock](#), 343 Ark. 452, 37 S.W.3d 202 (2001) (first occupant); [Campbell v. Cochran](#), 416 A.2d 211 (Del. Super. Ct. 1980); [Village of Northfield v. BP America, Inc.](#), 403 Ill. App. 3d 55, 342 Ill. Dec. 827, 933 N.E.2d 413 (1st Dist. 2010); [Ritz v. Selma United Methodist Church](#), 467 N.W.2d 266 (Iowa 1991); [Schoenholz v. Hinzman](#), 295 Kan. 786, 289 P.3d 1155 (2012); [Ingram v. State](#), 261 S.W.3d 749 (Tex. App. Tyler 2008).
- ³ [R.M.S. Titanic, Inc. v. Wrecked and Abandoned Vessel](#), 286 F.3d 194 (4th Cir. 2002); [Klein v. Unidentified Wrecked and Abandoned Sailing Vessel](#), 758 F.2d 1511 (11th Cir. 1985); [Terry v. Lock](#), 343 Ark. 452, 37 S.W.3d 202 (2001); [Benjamin v. Lindner Aviation, Inc.](#), 534 N.W.2d 400 (Iowa 1995); [Hawkins v. Mahoney](#), 1999 MT 296, 297 Mont. 98, 990 P.2d 776 (1999).
- ⁴ [Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel](#), 640 F.2d 560 (5th Cir. 1981); [Klein v. Unidentified, Wrecked and Abandoned Sailing Vessel](#), 568 F. Supp. 1562 (S.D. Fla. 1983), decision *aff'd*, 758 F.2d 1511 (11th Cir. 1985); [Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel](#), 546 F. Supp. 919 (S.D. Fla. 1981).
- ⁵ [State v. \\$281,420.00 in United States Currency](#), 312 S.W.3d 547 (Tex. 2010).
- ⁶ [Ingram v. State](#), 261 S.W.3d 749 (Tex. App. Tyler 2008).
- ⁷ § 1.
- ⁸ [R.M.S. Titanic, Incorporated v. The Wrecked and Abandoned Vessel](#), 435 F.3d 521 (4th Cir. 2006); [Odyssey Marine Exploration, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel](#), 727 F. Supp. 2d 1341 (M.D. Fla. 2010); [JTR Enterprises, LLC v. An Unknown Quantity of Colombian Emeralds, Amethysts and Quartz Crystals](#), 922 F. Supp.

2d 1326 (S.D. Fla. 2013), appeal dismissed, (11th Cir. 13-10870)(Mar. 21, 2014); [Smith v. The Abandoned Vessel](#), 610 F. Supp. 2d 739 (S.D. Tex. 2009).

⁹ [Indian River Recovery Co. v. The China](#), 645 F. Supp. 141 (D. Del. 1986); [MDM Salvage, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel](#), 631 F. Supp. 308 (S.D. Fla. 1986).

¹⁰ [Indian River Recovery Co. v. The China](#), 645 F. Supp. 141 (D. Del. 1986).

¹¹ [Indian River Recovery Co. v. The China](#), 645 F. Supp. 141 (D. Del. 1986).

¹² [R.M.S. Titanic, Inc. v. Wrecked and Abandoned Vessel](#), 286 F.3d 194 (4th Cir. 2002).

¹³ [Odyssey Marine Exploration, Inc. v. Unidentified, Wrecked and Abandoned Sailing Vessel](#), 727 F. Supp. 2d 1341 (M.D. Fla. 2010).

¹⁴ Am. Jur. 2d, Carriers §§ 360, 439, 442.

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 26

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Abandoned, Lost, and Unclaimed Property

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II. Rights and Obligations of Finders, Owners, and Former Owners

B. Abandoned Property

§ 26. Finders—Filing and service of notice or report

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5

Forms

Notices, Affidavits, and Reports of Finders: see Am. Jur. Legal Forms 2d, Abandoned, Lost, and Unclaimed Property
[\[WestlawNext®\(r\) Search Query\]](#)

Under the Uniform Unclaimed Property Act (1995), a holder of property presumed abandoned must make a report to a designated state administrator concerning the property.¹ The report must be verified and must contain certain elements, including a description of the property and certain other details regarding the owner, where the property is valued in excess of \$50.² It must also contain an affidavit of compliance with all notice requirements.³ Successor holders must also include information regarding the identities of their predecessor holders.⁴

The Act specifies dates by which the report must be filed annually⁵ and mandates that notice be sent, within specified time periods, to the apparent owner of the property if known and if the property is worth at least \$50 and the owner's claim is not time barred.⁶ Extensions of time may be sought prior to the mandated filing and notice dates.⁷ Additionally, the state administrator is mandated to publish lists of notices of abandoned property delivered or paid over to the administrator.⁸

It is the holder's duty to turn over the property to the owner in compliance with the requirements of the Act.⁹

An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with the provisions of the Act regarding delivery of the property is not liable to the apparent owner and must be indemnified against claims of any person in accordance with the Act.¹⁰

Where a statute provides for the passage of absolute title to the finder upon the expiration of a stated period after notice to the

apparent owner, or permits the finder to sell the abandoned property upon compliance with specified conditions, the failure to comply with the notice and waiting period or sale conditions will preclude the passage of absolute title and invalidate any sale.¹¹

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding the holder to file a report are at Revised Uniform Unclaimed Property Act § 401(2016). The provisions specifying the content of the report are at Revised Uniform Unclaimed Property Act § 402(2016). The provision specifying when the report must be filed is at Revised Uniform Unclaimed Property Act § 403(2016).

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding notices by the administrator are at Revised Uniform Unclaimed Property Act § 503(2016). The Comment to this section notes that, where prior Acts required mere publication of lists by administrators, the 2016 Act puts a greater emphasis on facilitating administrator outreach through publication and websites or similar databases to apparent owners to increase awareness of their property and how to claim it.

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding payment or delivery of the property to the administrator are at Revised Uniform Unclaimed Property Act § 603(2016).

[END OF SUPPLEMENT]

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Footnotes

¹ Unif. Unclaimed Property Act § 7(a) (1995).

² Unif. Unclaimed Property Act § 7(b) (1995).

³ Unif. Unclaimed Property Act § 7(g) (1995).

⁴ Unif. Unclaimed Property Act § 7(c) (1995).

⁵ Unif. Unclaimed Property Act § 7(d) (1995).

⁶ Unif. Unclaimed Property Act § 7(e) (1995).

⁷ Unif. Unclaimed Property Act § 7(f) (1995).

⁸ Unif. Unclaimed Property Act § 9 (1995).

⁹ Unif. Unclaimed Property Act § 8(a) to (c) (1995).

¹⁰ Unif. Unclaimed Property Act §§ 8(d), 10 (1995).

¹¹ *Pruitt v. LGR Trucking, Inc.*, 148 Ohio App. 3d 481, 2002-Ohio-722, 774 N.E.2d 273 (1st Dist. Hamilton County 2002) (failure to wait 45 days after notice to complete sale invalidated sale).

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II. Rights and Obligations of Finders, Owners, and Former Owners

B. Abandoned Property

§ 27. Former owners

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[Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025](#)

Forms

Answer—Allegation—Abandonment of property by former owner: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

Instruction to jury—Availability of abandonment as a defense in action by former owner: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

Under the common law, abandonment divests the former owner of title to the property as if he or she had never had any right or interest in it.¹ A former owner cannot thereafter reassert his or her rights of ownership to the prejudice of those who may have, in the meantime, appropriated the property.²

Observation:

Once property is abandoned by the owner, the owner, like anyone else, may appropriate it once it is abandoned if it has not already been appropriated by someone else.³

Under certain state statutes regulating the disposition of abandoned property, including the Uniform Unclaimed Property Act, the owner of abandoned property may continue to have a right to reclaim the property.⁴ Thus, property over which the State has assumed protective custody may be reclaimed from the State at any time, and even when such property has escheated to the State, the former owner may have a statutory right to reclaim it within a stated period of time.⁵ Additionally, where the property is subject to a presumption of abandonment under the statute,⁶ the presumption may be rebutted so that the property must be returned,⁷ or the property may be subject to transfer of absolute title to the finder only where no claim is made to the property by the owner.⁸

Observation:

Abandonment of personalty constitutes a complete defense to conversion and, likewise, to any cause of action in which the former owner's ownership is essential.⁹

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding a claim for property by a person claiming to be the owner are at Revised Uniform Unclaimed Property Act § 903.

[END OF SUPPLEMENT]

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Footnotes

- ¹ Terry v. Lock, 343 Ark. 452, 37 S.W.3d 202 (2001); Right Reason Publications v. Silva, 691 N.E.2d 1347 (Ind. Ct. App. 1998); Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995); Kitchen v. Wachovia Bank & Trust Co., N.A., 44 N.C. App. 332, 260 S.E.2d 772 (1979); State v. Kealey, 80 Wash. App. 162, 907 P.2d 319 (Div. 2 1995), as amended on denial of reconsideration, (Feb. 26, 1996).
- ² Kitchen v. Wachovia Bank & Trust Co., N.A., 44 N.C. App. 332, 260 S.E.2d 772 (1979).
- ³ Right Reason Publications v. Silva, 691 N.E.2d 1347 (Ind. Ct. App. 1998).
- ⁴ Unif. Unclaimed Property Act § 15 (1995).
- ⁵ §§ 48, 49.

⁶ § 57.

⁷ Hawkins v. Mahoney, 1999 MT 296, 297 Mont. 98, 990 P.2d 776 (1999).

⁸ § 32.

⁹ Herron v. Whiteside, 782 S.W.2d 414 (Mo. Ct. App. W.D. 1989).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 28

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Abandoned, Lost, and Unclaimed Property

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II. Rights and Obligations of Finders, Owners, and Former Owners

B. Abandoned Property

§ 28. Owner of land where property found

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Traditionally, the rights of the finder of abandoned property would prevail as against the person upon whose land the property was found and any person upon whose land it happens to have been left.¹ That is, the determination of the finder's right to abandoned property is unaffected by the ownership of the land on which the property is found.²

However, the common law of finds which generally assigns ownership of the abandoned property without regard to where the property is found is subject to two exceptions.³ First, where the abandoned property is embedded in the soil, it belongs to the owner of the soil.⁴ Second, when the owner of the land where the abandoned property is found has constructive possession of the property such that the property is not lost, it belongs to the owner of the land.⁵ "Constructive possession," for this purpose, is generally defined as knowingly having both the power and intention, at a given time, to exercise dominion or control over the property.⁶

Caution:

Some authority holds that if a person trespasses onto real property and takes possession of abandoned personal property, such an act is wrongful, and no title to the property is created in him or her.⁷ Instead, title rests in the owner of the soil, and the wrongdoer is liable for the trespass and for conversion.⁸

- ¹ Favorite v. Miller, 176 Conn. 310, 407 A.2d 974 (1978).
- ² Klein v. Unidentified Wrecked and Abandoned Sailing Vessel, 758 F.2d 1511 (11th Cir. 1985).
- ³ U.S. v. Shivers, 96 F.3d 120 (5th Cir. 1996); Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs, 2015 WL 1471267 (M.D. Ga. 2015).
- ⁴ § 23.
- ⁵ U.S. v. Shivers, 96 F.3d 120 (5th Cir. 1996); Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs, 2015 WL 1471267 (M.D. Ga. 2015).
As to the similar rule for mislaid property, see § 38.
- ⁶ Klein v. Unidentified, Wrecked and Abandoned Sailing Vessel, 568 F. Supp. 1562 (S.D. Fla. 1983), decision aff'd, 758 F.2d 1511 (11th Cir. 1985).
- ⁷ Ingram v. State, 261 S.W.3d 749 (Tex. App. Tyler 2008).
- ⁸ Ingram v. State, 261 S.W.3d 749 (Tex. App. Tyler 2008).

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A.L.R. Index, Personal Property

A.L.R. Index, Title and Ownership

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C. Lost Property

§ 29. Finder's rights

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Forms

Petition or application—By finder—To deliver unclaimed or abandoned property to public officer and relieve finder of responsibility to owner: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

Petition or application—By finder—To establish title to lost property: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

Order—Vesting title to lost property in finder: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

Lost property belongs to the first finder as against all persons but the loser.¹ That is, the finder of lost property does not acquire absolute ownership but acquires such property interest or right as will enable him or her to keep it against all the world but the rightful owner.² The finder of lost property holds it as a bailee for the true owner.³ As to all others, the finder's rights are tantamount to ownership, giving him or her the right to possess and hold the found goods.⁴ This rule is not affected by the place of finding⁵ as the owner or occupier of the premises on which lost property is found does not acquire title to the lost property.⁶ Thus, the finder of lost property has a right to possession of the article superior to that of the owner or occupant of the premises where it is found⁷ but not against the lost property's true owner.⁸

Observation:

Statutes governing the rights of finders of property apply to lost property only and do not abrogate the common law classifications

of found property.⁹

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Footnotes

- ¹ U.S. v. One Hundred Sixty-Five Thousand Five Hundred Eighty Dollars (165,580) in U.S. Currency, 502 F. Supp. 2d 114 (D. Me. 2007) (applying Maine common law).
- ² Smith v. Purvis, 474 So. 2d 1131 (Ala. Civ. App. 1985); Hendle v. Stevens, 224 Ill. App. 3d 1046, 166 Ill. Dec. 868, 586 N.E.2d 826 (2d Dist. 1992); Ritz v. Selma United Methodist Church, 467 N.W.2d 266 (Iowa 1991); Hurley v. City of Niagara Falls, 30 A.D.2d 89, 289 N.Y.S.2d 889 (4th Dep't 1968), judgment aff'd, 25 N.Y.2d 687, 306 N.Y.S.2d 689, 254 N.E.2d 917 (1969).
- ³ Ganter v. Kapiloff, 69 Md. App. 97, 516 A.2d 611 (1986).
- ⁴ Ganter v. Kapiloff, 69 Md. App. 97, 516 A.2d 611 (1986).
- ⁵ Klein v. Unidentified, Wrecked and Abandoned Sailing Vessel, 568 F. Supp. 1562 (S.D. Fla. 1983), decision aff'd, 758 F.2d 1511 (11th Cir. 1985).
- ⁶ State v. \$281,420.00 in United States Currency, 312 S.W.3d 547 (Tex. 2010).
- ⁷ Eads v. Brazelton, 22 Ark. 499, 1861 WL 699 (1861); State v. Green, 456 So. 2d 1309 (Fla. 3d DCA 1984); Hendle v. Stevens, 224 Ill. App. 3d 1046, 166 Ill. Dec. 868, 586 N.E.2d 826 (2d Dist. 1992); Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985); State v. \$281,420.00 in United States Currency, 312 S.W.3d 547 (Tex. 2010).
- ⁸ State v. \$281,420.00 in United States Currency, 312 S.W.3d 547 (Tex. 2010).
- ⁹ Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
As to lost-property statutes, see § 32.

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C. Lost Property

§ 30. Finder's rights—Effect of employment or fiduciary relationship

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If a police officer personally finds lost property while on duty, it is part of his or her duty to secure such property and to return it to its owner.¹ Therefore, if his or her duties place the officer in a position to find such property, it is found in the officer's capacity as an agent of the State, not in his or her personal capacity.² This is based on the rationale that allowing an officer to claim the property would create an obvious conflict with the duty of safeguarding citizens' property, which could erode the essential public trust.³

Observation:

Lost property which comes into the possession of the police department may become the property of the police department to the extent that no valid claim is made for it by a purported owner.⁴

Where property is discovered in a place where only customers of the owner of the premises have a right to be, as, for example, where property is discovered in the safe-deposit vault area of a bank, the bank, as agent or trustee for the true owner, has the right to the custody of any property found.⁵ Under this rule, an employee is, as against his or her employer, entitled to property which he or she finds on the employer's premises.⁶ However, there is an opposing view expressed where employees have found property while in their employ, which has charged the employee with a duty to turn the found property over to the employer for safe keeping, reasoning that the possession of the employee is the possession of the employer.⁷

Footnotes

- ¹ In re Funds in Possession of Conemaugh Tp. Sup'rs, 562 Pa. 85, 753 A.2d 788 (2000); State v. Kealey, 80 Wash. App. 162, 907 P.2d 319 (Div. 2 1995), as amended on denial of reconsideration, (Feb. 26, 1996).
- ² In re Funds in Possession of Conemaugh Tp. Sup'rs, 562 Pa. 85, 753 A.2d 788 (2000).
- ³ In re Funds in Possession of Conemaugh Tp. Sup'rs, 724 A.2d 990 (Pa. Commw. Ct. 1999), order aff'd, 562 Pa. 85, 753 A.2d 788 (2000).
- ⁴ Frederick v. State, 719 So. 2d 233 (Ala. Civ. App. 1998) (weapons found in a stolen car).
- ⁵ Pyle v. Springfield Marine Bank, 330 Ill. App. 1, 70 N.E.2d 257 (3d Dist. 1946); Dennis v. Northwestern Nat. Bank, 249 Minn. 130, 81 N.W.2d 254 (1957).
- ⁶ Morgan and Bros. Manhattan Storage Co., Inc. v. McGuire, 114 Misc. 2d 951, 452 N.Y.S.2d 986 (Sup 1982), order modified on other grounds, 97 A.D.2d 695, 468 N.Y.S.2d 331 (1st Dep't 1983); Toledo Trust Co. v. Simmons, 52 Ohio App. 373, 6 Ohio Op. 388, 21 Ohio L. Abs. 624, 3 N.E.2d 661 (6th Dist. Lucas County 1935).
- ⁷ Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 (N.Y. City Ct. 1991); Ray v. Flower Hosp., 1 Ohio App. 3d 127, 439 N.E.2d 942 (6th Dist. Lucas County 1981).

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C. Lost Property

§ 31. Joint finders

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[Landlord's permitting third party to occupy premises rent-free as acceptance of tenant's surrender of premises, 18 A.L.R.5th 437](#)

If lost property is found by several persons, under such circumstances that the finding is the joint act of all, they have equal rights in the thing found.¹ Generally, the courts have inclined, in doubtful cases, to regard the finding as joint, and all persons present, and to any degree participating, as joint finders.²

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Footnotes

¹ [Felt v. Carr, 59 Pa. D. & C. 237, 1947 WL 2867 \(C.P. 1947\).](#)

² [Edmonds v. Ronella, 73 Misc. 2d 598, 342 N.Y.S.2d 408 \(Sup 1973\)](#) (three children who discovered an envelope containing a large sum of cash, in a trash pile, were each entitled to a one-third share thereof even though only one of them was listed by police as the “sole finder”).

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§ 32. Lost-property statutes

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[Title to unknown valuables secreted in articles sold](#), 4 A.L.R.2d 318

Forms

Affidavits and Notices by Finder—Relating to Lost Property: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

Lost-property statutes are intended to encourage and facilitate the return of property to its true owner and then to reward a finder for honesty if the property remains unclaimed.¹ Under some statutory schemes, when lost property is found, and the owner cannot be ascertained within a stated period of time following its discovery, title to the property will vest in the finder upon the finder's demand for the property.² Other statutory schemes may provide for surrender to a sheriff or public authority and subsequent auction of lost property after a stated period during which the property remains unclaimed by any owner and then permit a claim by the finder on the proceeds.³

Where statutes regulating the disposition of lost property have been enacted, a finder can, generally, divest a true owner of his or her original title to lost property by complying with their provisions.⁴ Further, finders can avoid liability to the true owner if they comply fully with the statutory provisions.⁵ Thus, where the statute vests title to the property in the finder unless the property is claimed by the rightful owner within six months after the finding, the title will vest in the finder where the

owner's claim precedes the actual finding of the property.⁶

A state's lost goods statute was applicable where an individual, while hunting on another's unposted and unoccupied land, found a case full of money concealed beneath some brush on the property.⁷ Under such a statute, a court has rejected the argument that the finder, as a trespasser, was not entitled to recover the property, stating that, particularly in the instant situation where the property was unoccupied and unposted, there would be little danger of people engaging in inappropriate behavior in order to become "finders" under the provisions of the act.⁸

Observation:

Where a statute applies only to lost property, so that the other common law classifications and rights of finders continue to apply, a restrictive view of lost-property statutes is taken.⁹

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Footnotes

- ¹ § 3.
- ² *Fuentes v. Wendt*, 106 Misc. 2d 1030, 436 N.Y.S.2d 801 (Sup 1981).
- ³ *Smith v. Purvis*, 474 So. 2d 1131 (Ala. Civ. App. 1985).
- ⁴ *Fisher v. Klingenger*, 152 Misc. 2d 317, 576 N.Y.S.2d 476 (N.Y. City Ct. 1991).
- ⁵ *Fisher v. Klingenger*, 152 Misc. 2d 317, 576 N.Y.S.2d 476 (N.Y. City Ct. 1991).
- ⁶ *Peterson v. Diaz*, 379 So. 2d 990 (Fla. 3d DCA 1980).
- ⁷ *Willsmore v. Oceola Tp.*, 106 Mich. App. 671, 308 N.W.2d 796, 23 A.L.R.4th 1012 (1981).
- ⁸ *Willsmore v. Oceola Tp.*, 106 Mich. App. 671, 308 N.W.2d 796, 23 A.L.R.4th 1012 (1981).
- ⁹ *Benjamin v. Lindner Aviation, Inc.*, 534 N.W.2d 400 (Iowa 1995).

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§ 33. Finder's duties; duty to seek true owner

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[Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025](#)

Forms

Affidavits and Notices by Finder—Relating to Lost Property: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

A person who finds lost property is not required to take charge of it, but if he or she chooses to undertake its custody, he or she is responsible to the owner for its safekeeping and its return if demanded.¹ Further, if a finder of lost property has reasonable grounds to believe that he or she knows the owner or the owner can be found, the finder cannot appropriate the property to his or her own use as against the owner.² Indeed, when property belonging to another is found and the circumstances apparent to the finder at the time that the property was found indicate that the property is lost, as opposed to abandoned, the finder can be guilty of larceny if at the time of taking the property the finder intends to steal it.³ However, a finder was not liable, civilly or criminally, for keeping the property it found against all false claims of ownership or even against claims of ownership which the finder reasonably believed to be false.⁴

Even if there is nothing to indicate to whom the lost property belongs, the finder is bound to make a reasonable attempt to find the owner.⁵ If a finder delivers lost property to a third person whom he or she reasonably—but mistakenly—believed to

be the true owner, he or she may become liable to claims by the true owner notwithstanding delivery of the found property to a third person by honest mistake.⁶

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Footnotes

- ¹ [Joy v. Crawford, 154 S.W. 357 \(Tex. Civ. App. Dallas 1913\)](#) (damages recovered by owner of diamond for nicks caused by finder).
- ² [In re B.C., 191 Ohio App. 3d 739, 2010-Ohio-6377, 947 N.E.2d 724 \(3d Dist. Logan County 2010\)](#).
If a finder of property knows who the property belongs to, the finders are obliged to return it upon the property owner's demand. [Kentuckiana Healthcare, Inc. v. Fourth St. Solutions, LLC, 517 F.3d 446 \(7th Cir. 2008\)](#) (applying Indiana law).
- ³ [In re B.C., 191 Ohio App. 3d 739, 2010-Ohio-6377, 947 N.E.2d 724 \(3d Dist. Logan County 2010\)](#).
- ⁴ [Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 \(N.Y. City Ct. 1991\)](#).
- ⁵ [Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 \(N.Y. City Ct. 1991\)](#).
- ⁶ [Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 \(N.Y. City Ct. 1991\)](#).

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§ 34. Finder's duties; duty to seek true owner—Under lost-property statute

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[Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025](#)

Forms

Affidavits and Notices by Finder—Relating to Lost Property: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext® Search Query\]](#)

Under certain state statutes, if a finder of lost personal property finds such property under circumstances which give him or her knowledge or means of inquiry as to the true owner, the finder is required to make all reasonable efforts to ascertain and notify such owner.¹ Where the finder is a police department, statute may impose an obligation on the police to attempt to notify the owner.²

Statutory enactments have, in many cases, also modified the common law responsibilities of finders so that if the finder follows the procedure prescribed, and the owner does not claim it within the statutory period, there is no liability for delivering it to a person other than the owner.³ While, in certain circumstances, state statutes may exculpate finders from liability to the true owner,⁴ the inverse does not necessarily apply. For example, there may be no inference that a finder becomes automatically liable to the true owner if he or she does not comply fully with the provisions of the state statute⁵ although there is authority to the contrary holding the finder liable to the true owner for failure to follow the statutory

procedures.⁶ Even so, many such statutes function only to establish the rights and liabilities of owners and do not address the issue of a finder's liability as such statutes' main function is to dispose of lost property which the true owner never claims.⁷

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Footnotes

- ¹ [Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 \(N.Y. City Ct. 1991\); Matter of Unknown Silver Coins, 418 N.W.2d 317 \(S.D. 1988\).](#)
- ² [State v. Kealey, 80 Wash. App. 162, 907 P.2d 319 \(Div. 2 1995\), as amended on denial of reconsideration, \(Feb. 26, 1996\).](#)
- ³ [Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 \(N.Y. City Ct. 1991\).](#)
- ⁴ [Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 \(N.Y. City Ct. 1991\).](#)
- ⁵ [Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 \(N.Y. City Ct. 1991\).](#)
- ⁶ [Narum v. City of Billings, 207 Mont. 322, 673 P.2d 1253 \(1983\).](#)
- ⁷ [Fisher v. Klingenger, 152 Misc. 2d 317, 576 N.Y.S.2d 476 \(N.Y. City Ct. 1991\).](#)

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§ 35. Finder's duties; duty to seek true owner—Applicable standard of care

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[Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025](#)

Generally, a finder of lost property must, at least, use ordinary care for the preservation of the thing found,¹ in the absence of a statute imposing a greater duty.² A finder's belief or reasonable grounds of belief regarding finding the owner of lost property are determined not by the degree of diligence that he or she might be able to use but by the circumstances apparent to the finder at the time the property is found.³

Observation:

A statute primarily intended to define the rights of finders when lost property remains unclaimed by owners is not intended to alter common law rules as to finders' civil liability to owners.⁴

- ¹ [Waugh v. University of Hawaii](#), 63 Haw. 117, 621 P.2d 957 (1980) (due care); [Matter of Unknown Silver Coins](#), 418 N.W.2d 317 (S.D. 1988).
- ² [Moral Ins. Co. v. Cooksey](#), 1955 OK 179, 285 P.2d 223 (Okla. 1955).
- ³ [In re B.C.](#), 191 Ohio App. 3d 739, 2010-Ohio-6377, 947 N.E.2d 724 (3d Dist. Logan County 2010).
- ⁴ [Fisher v. Klingenger](#), 152 Misc. 2d 317, 576 N.Y.S.2d 476 (N.Y. City Ct. 1991).

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§ 36. Owners

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Complaint, petition, or declaration—Against finder—For failure to give notice of finding: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

Complaint, petition, or declaration—Against owner of business establishment—For recovery of money found by plaintiff on owner's premises: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

Answer—Defense—Compliance with statutory notice requirement—Finder's failure to claim property within statutory period: see Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property [\[WestlawNext®\(r\) Search Query\]](#)

Ownership in property is not relinquished by losing it.¹ Owners of lost property, or their representatives, if deceased,² generally have the right to reclaim it from the finder.³ However, the owner's right to such property may be cut off if the finder has complied with the statutory provisions relating to the posting and advertising of his or her find and if the owner does not claim it within the statutory period.⁴

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Footnotes

¹ [State v. Kealey](#), 80 Wash. App. 162, 907 P.2d 319 (Div. 2 1995), as amended on denial of reconsideration, (Feb. 26, 1996).

² [Ritz v. Selma United Methodist Church](#), 467 N.W.2d 266 (Iowa 1991).

³ [Terry v. Lock](#), 343 Ark. 452, 37 S.W.3d 202 (2001).

⁴ [MacFarlane v. Bloch](#), 59 Or. 1, 115 P. 1056 (1911).
As to lost-property statutes, see § 32.

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A finder of mislaid property acquires no ownership rights in it.¹ Where such property is found upon another's premises, the finder has no right to its possession² but is required to turn it over to the owner of the premises,³ who has the duty to safeguard the property for the true owner.⁴ This is true whether the finder is an employee or occupier of the premises on which the mislaid article is found⁵ or a customer of the owner or occupant.⁶ If the finder of mislaid property is the employee of another, and he or she finds it in his or her status as an employee, then the right of custody of the property is in the employer and not in the employee or agent who recovers its physical possession.⁷

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Footnotes

- ¹ [Favorite v. Miller](#), 176 Conn. 310, 407 A.2d 974 (1978); [Hendle v. Stevens](#), 224 Ill. App. 3d 1046, 166 Ill. Dec. 868, 586 N.E.2d 826 (2d Dist. 1992).
- ² [Flax v. Monticello Realty Co.](#), 185 Va. 474, 39 S.E.2d 308 (1946).
- ³ [Grande v. Jennings](#), 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); [Campbell v. Cochran](#), 416 A.2d 211 (Del. Super. Ct. 1980).
- ⁴ [Grande v. Jennings](#), 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012).
As to the status of the owner of premises as a gratuitous bailee of mislaid personal property left by an invitee, see § 38.
- ⁵ [McDonald v. Railway Exp. Agency](#), 89 Ga. App. 884, 81 S.E.2d 525 (1954); [Schley v. Couch](#), 155 Tex. 195, 284 S.W.2d 333 (1955).
- ⁶ [Foulke v. New York Consol. R. Co.](#), 228 N.Y. 269, 127 N.E. 237, 9 A.L.R. 1384 (1920).
- ⁷ [McDonald v. Railway Exp. Agency](#), 89 Ga. App. 884, 81 S.E.2d 525 (1954); [Dennis v. Northwestern Nat. Bank](#), 249

[Minn. 130, 81 N.W.2d 254 \(1957\).](#)

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 38

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II. Rights and Obligations of Finders, Owners, and Former Owners

D. Mislaid Property

§ 38. Owner or occupant of premises where property found

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[Liability for loss of hat, coat, or other property deposited by customer in place of business, 54 A.L.R.5th 393](#)

The right of possession, as against all except the true owner, is in the owner or occupant of the premises where mislaid property is discovered.¹ This is because it is presumed that the owner or occupier of the premises on which mislaid property is found has custody of the property.² When the owner of premises takes possession of mislaid personal property left by an invitee, he or she becomes a gratuitous bailee by operation of law, with a duty to use ordinary care to return it to the owner.³

Observation:

Where a tenant finds mislaid property in the basement of his or her apartment, which includes the basement, the tenant, not the landlord, is entitled to the property as the person in possession of the premises.⁴

The rule that the owner of the premises where mislaid property is found has rights to possession superior to those of the finder may, however, be changed by statute, and thus, this distinction between lost and mislaid property may be abolished.⁵

§ 38. Owner or occupant of premises where property found, 1 Am. Jur. 2d Abandoned,...

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Footnotes

- ¹ Terry v. Lock, 343 Ark. 452, 37 S.W.3d 202 (2001); Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980) (the owner of the premises is entitled to the property); State v. Green, 456 So. 2d 1309 (Fla. 3d DCA 1984); Corliss v. Wenner, 136 Idaho 417, 34 P.3d 1100 (Ct. App. 2001); Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995); Ray v. Flower Hosp., 1 Ohio App. 3d 127, 439 N.E.2d 942 (6th Dist. Lucas County 1981); Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985); State v. \$281,420.00 in United States Currency, 312 S.W.3d 547 (Tex. 2010).
- ² State v. \$281,420.00 in United States Currency, 312 S.W.3d 547 (Tex. 2010).
- ³ Mickey v. Sears, Roebuck & Co., 196 Md. 326, 76 A.2d 350 (1950); Kimbrough v. Giant Food Inc., 26 Md. App. 640, 339 A.2d 688 (1975).
The holder of mislaid property is a gratuitous bailee for the owner and is required to hold the property indefinitely. Dolitsky v. Dollar Savings Bank, 203 Misc. 262, 118 N.Y.S.2d 65 (Mun. Ct. 1952).
- ⁴ Rofrano v. Duffy, 291 F.2d 848 (2d Cir. 1961).
- ⁵ Rofrano v. Duffy, 291 F.2d 848 (2d Cir. 1961) (defining lost property as including both mislaid and lost property, and giving the finder, with certain exceptions, entitlement to it as against the person in possession of the premises where it is found).
As to lost-property statutes, see § 32.
As to statutes which determine the rights to property without reference to status, see § 21.

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II. Rights and Obligations of Finders, Owners, and Former Owners

D. Mislaid Property

§ 39. Owners

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The owner of mislaid property is constructively in possession of such property although its custody may be in another on whose premises it has been left,¹ and he or she has a right to reclaim it from any person who has assumed custody² even though it remained undiscovered for a period of time.³ In applying the rules of ownership relating to mislaid property, if the original owner is deceased that person's heirs or legatees are entitled to lay claim to the property.⁴

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Footnotes

¹ [Ritz v. Selma United Methodist Church](#), 467 N.W.2d 266 (Iowa 1991); [Silcott v. Louisville Trust Co.](#), 205 Ky. 234, 265 S.W. 612, 43 A.L.R. 28 (1924).

² [Benjamin v. Lindner Aviation, Inc.](#), 534 N.W.2d 400 (Iowa 1995); [State v. Kealey](#), 80 Wash. App. 162, 907 P.2d 319 (Div. 2 1995), as amended on denial of reconsideration, (Feb. 26, 1996); [Hardy v. Potter](#), 69 Wyo. 22, 236 P.2d 525 (1951).

³ [Grande v. Jennings](#), 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012) (seven years).

⁴ [Ritz v. Selma United Methodist Church](#), 467 N.W.2d 266 (Iowa 1991).
The \$500,000 an original homeowner hid in the walls of his home, found by a remodeling contractor after the home had been sold, constituted mislaid funds that belonged to the true owner, the original homeowner's estate. [Grande v. Jennings](#), 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012).

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II. Rights and Obligations of Finders, Owners, and Former Owners

E. Treasure Trove

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 40

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II. Rights and Obligations of Finders, Owners, and Former Owners

E. Treasure Trove

§ 40. Finders

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A.L.R. Library

[Modern status of rules as to ownership of treasure trove as between finder and owner of property on which found, 61 A.L.R.4th 1180](#)

In the absence of legislation, the rule is that the title to treasure trove belongs to the finder against all the world, except the true owner,¹ regardless of the place of finding.² The finder of treasure trove has a right thereto as against the owner or occupant of the premises where it is found.³ The fact that the finder is an employee of the owner of the premises where it is found does not affect his or her right.⁴ However, the finder of treasure trove embedded in the earth acquires no title since the presumption is that the owner of the land on which the property is found has possession.⁵ Further in a jurisdiction which does not officially recognize the doctrine of treasure trove, the rights of a finder depend on whether the property is classified as mislaid property or lost property.⁶

Observation:

Under the English common law treasure trove became the property of the Crown.⁷ It was the Crown's desire to appropriate such property for purposes of state that originally resulted in the common law distinction between treasure trove and lost property.⁸ This particular aspect of the common law apparently did not survive the voyage across the Atlantic Ocean, for no state has ever claimed sovereign entitlement to treasure trove.⁹

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Footnotes

- ¹ Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012) (stating common law rule); Franks v. Pritchett, 88 Ark. App. 243, 197 S.W.3d 5 (2004); Davison v. Strickland, 145 Ga. App. 420, 243 S.E.2d 705 (1978); Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995); Ritz v. Selma United Methodist Church, 467 N.W.2d 266 (Iowa 1991); Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).
- ² Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012).
- ³ Niederlehner v. Weatherly, 78 Ohio App. 263, 33 Ohio Op. 572, 69 N.E.2d 787 (1st Dist. Hamilton County 1946); Hill v. Schrunck, 207 Or. 71, 292 P.2d 141 (1956).
- ⁴ Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).
- ⁵ Morgan v. Wiser, 711 S.W.2d 220, 61 A.L.R.4th 1173 (Tenn. Ct. App. 1985).
As to property embedded in the earth, generally, see § 23.
- ⁶ Schley v. Couch, 155 Tex. 195, 284 S.W.2d 333 (1955).
- ⁷ Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).
- ⁸ Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).
- ⁹ Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).

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II. Rights and Obligations of Finders, Owners, and Former Owners

E. Treasure Trove

§ 41. Finders—Effect of statute

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[Modern status of rules as to ownership of treasure trove as between finder and owner of property on which found, 61 A.L.R.4th 1180](#)

Some statutes completely abrogate the common law concept of treasure trove¹ while others have been held not to eliminate the common law rules with regard to property found intentionally concealed or buried.² Where state statutes have been applied in determining the ownership of treasure trove, the trend appears to be to merge the law of treasure trove with the law of lost property.³ If the true ownership of treasure trove cannot be proved, its finder has been held to have title against the owner of the real estate on which it was found.⁴ However, other courts have recognized and perpetuated the distinction between lost property and treasure trove by holding that statutes relating to the duties of finders of lost property are not applicable to finders of treasure trove.⁵

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Footnotes

¹ [Willsmore v. Ocoila Tp.](#), 106 Mich. App. 671, 308 N.W.2d 796, 23 A.L.R.4th 1012 (1981) (stating that the doctrine had never been adopted in the state and that the rights of parties were governed by the applicable lost goods statute).

² [Zech v. Accola](#), 253 Wis. 80, 33 N.W.2d 232 (1948) (common law concept of treasure trove had not been superseded by a statute providing for the disposition of lost goods which required the finder of lost goods to post notice of their discovery).

³ [U.S. v. Peter](#), 178 F. Supp. 854 (E.D. La. 1959), judgment aff'd on other grounds, 283 F.2d 696 (5th Cir. 1960).

⁴ [U.S. v. Peter](#), 178 F. Supp. 854 (E.D. La. 1959), judgment aff'd on other grounds, 283 F.2d 696 (5th Cir. 1960) (under state code dealing with treasure trove or lost property, the finder of treasure owned it only if its true ownership could not be proved); [Willsmore v. Oceola Tp.](#), 106 Mich. App. 671, 308 N.W.2d 796, 23 A.L.R.4th 1012 (1981); [Hurley v. City of Niagara Falls](#), 30 A.D.2d 89, 289 N.Y.S.2d 889 (4th Dep't 1968), judgment aff'd, 25 N.Y.2d 687, 306 N.Y.S.2d 689, 254 N.E.2d 917 (1969) (title to treasure trove that is not returned to its owner exists in its finder under the state lost-property statute).
As to lost-property statutes, see § 32.

⁵ [Zech v. Accola](#), 253 Wis. 80, 33 N.W.2d 232 (1948).

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E. Treasure Trove

§ 42. Owners

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[Modern status of rules as to ownership of treasure trove as between finder and owner of property on which found, 61 A.L.R.4th 1180](#)

Owners of treasure trove have, unless otherwise limited by statute, the right to reclaim it from the finder.¹ If the original owner of treasure trove is deceased, that person's heirs or legatees, or their personal representatives, are entitled to lay claim to the property.² Under the common law, the true owner's rights in treasure trove continue from the time of its discovery until the limitations period expires for actions seeking its recovery, and the finder has a duty to take reasonable steps to alert the true owner of its discovery.³ Generally, this rule, which may be enforced through criminal laws relating to larceny,⁴ continues where ownership may be at least partially determinable under a statute, in which specific steps may be prescribed,⁵ but a lengthy delay before compliance with those steps may not affect an award of title to a finder⁶ although complete noncompliance might.⁷

In determining the true ownership of alleged treasure trove, such factors have been considered as—

- the alleged owner's connection to the site of the find.⁸
- the packaging in which property was found.⁹
- the alleged owner's behavior, including his or her eccentricity in hiding valuables throughout the rooms of the house.¹⁰
- the alleged owner's attempt or lack of attempt to keep others away from the place in which property was later discovered.¹¹
- a party's admission that he or she knew nothing of the property, until it was found.¹²
- an individual's inability to testify accurately as to the contents of a found package, despite the assertion that the contents are his or hers.¹³

Footnotes

- ¹ Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
- ² Ritz v. Selma United Methodist Church, 467 N.W.2d 266 (Iowa 1991).
- ³ Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).
- ⁴ Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).
For discussion of finders of property as guilty of larceny, see Am. Jur. 2d, Larceny.[WestlawNext® Search Query]
- ⁵ Bishop v. Ellsworth, 91 Ill. App. 2d 386, 234 N.E.2d 49 (3d Dist. 1968).
- ⁶ Hurley v. City of Niagara Falls, 30 A.D.2d 89, 289 N.Y.S.2d 889 (4th Dep't 1968), judgment aff'd, 25 N.Y.2d 687, 306 N.Y.S.2d 689, 254 N.E.2d 917 (1969) (two years).
- ⁷ Campbell v. Cochran, 416 A.2d 211 (Del. Super. Ct. 1980).
- ⁸ Davison v. Strickland, 145 Ga. App. 420, 243 S.E.2d 705 (1978) (owner had built the structure in which the property was found).
- ⁹ Hill v. Schrunk, 207 Or. 71, 292 P.2d 141 (1956) (property was wrapped in the same wax paper as money found in deceased's home).
- ¹⁰ U.S. v. Peter, 178 F. Supp. 854 (E.D. La. 1959), judgment aff'd, 283 F.2d 696 (5th Cir. 1960).
- ¹¹ Willsmore v. Oceola Tp., 106 Mich. App. 671, 308 N.W.2d 796, 23 A.L.R.4th 1012 (1981) (finder often roamed over land without interference).
- ¹² Hurley v. City of Niagara Falls, 30 A.D.2d 89, 289 N.Y.S.2d 889 (4th Dep't 1968), judgment aff'd, 25 N.Y.2d 687, 306 N.Y.S.2d 689, 254 N.E.2d 917 (1969).
- ¹³ Willsmore v. Oceola Tp., 106 Mich. App. 671, 308 N.W.2d 796, 23 A.L.R.4th 1012 (1981).

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III. Rights of State to Property

A. In General

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A.L.R. Index, Lost Property

A.L.R. Index, Personal Property

A.L.R. Index, Title and Ownership

A.L.R. Index, Treasure Trove

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III. Rights of State to Property

A. In General

§ 43. Sovereign power

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[Validity, construction, and application of lost or abandoned goods statutes](#), 23 A.L.R.4th 1025

Every sovereign state has power to take charge of apparently abandoned or unclaimed property¹ provided it has “sufficient contacts” with the transaction which give rise to the abandonment to justify its action.² States as sovereigns may take custody of or assume title to abandoned personal property as bona vacantia through a process commonly called escheat.³

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Footnotes

¹ [Delaware v. New York](#), 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993) (noting that the process is commonly—though somewhat erroneously—called escheat); [Connecticut Mut. Life Ins. Co. v. Moore](#), 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).

² [Connecticut Mut. Life Ins. Co. v. Moore](#), 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).

³ [Delaware v. New York](#), 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).

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III. Rights of State to Property

A. In General

§ 44. Statutes; Uniform Act

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A state, subject to constitutional limitations, may use its legislative power to dispose of property within its reach belonging to unknown persons.¹ Many states have enacted legislation more or less comprehensive in scope providing in effect for the escheat of abandoned and unclaimed property or giving the state custody of such property with or without ultimate escheat.²

The Uniform Unclaimed Property Act provides that property that is presumed abandoned,³ whether located in that or another state, is subject to the custody of a state if:⁴

- (1) the last known address of the apparent owner, as shown on the records of the holder, is in that state;
- (2) the records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in that state;
- (3) the records of the holder do not reflect the last known address of the apparent owner and it is established that the last known address of the person entitled to the property is in that state, or the holder is domiciled in that state or is a government or governmental subdivision, agency, or instrumentality of that state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;
- (4) the last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property and the holder is domiciled in that state or is a government or governmental subdivision, agency, or instrumentality of that state;
- (5) the last known address of the apparent owner, as shown on the records of the holder, is in a foreign country and the holder is domiciled in that state or is a government or governmental subdivision, agency, or instrumentality of that state;
- (6) the transaction out of which the property arose occurred in this state, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the

property; or

(7) the property is a traveler's check or money order purchased in that state, or the issuer of the traveler's check or money order has its principal place of business in that state and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property, or do not show the state in which the instrument was purchased.

The Uniform Act is custodial in nature; that is, it does not result in the loss of the owner's property rights.⁵ That is, under the Act, ownership of the property remains with the owner and never vests in the state.⁶ The Uniform Act is not an escheat act but is a means of providing custodial possession by the state of property where the owner has not for a specified number of years exercised any control or possession of the property and offers the owner an opportunity to reclaim it at any time.⁷ The objectives of the Uniform Act are to protect unknown owners by finding them and restoring their property to them and to give the State, rather than the holders of unclaimed property, the benefit of its use.⁸

The objectives of a statute that provides that all intangible personal property that remains unclaimed by the owner for more than seven years is presumed abandoned are:⁹

- to protect the interests of owners
- to relieve the holders from annoyance, expense, and liability
- to preclude multiple liability
- to give the adopting state the use of some considerable sums of money that otherwise would, in effect, become a windfall to the holders thereof

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the rules for taking custody of property presumed abandoned are at Revised Uniform Unclaimed Property Act §§ 301 to 307(2016).

Revised Uniform Unclaimed Property Act § 301(2016) provides that: (1) the last-known address of an apparent owner is any description, code, or other indication of the location of the apparent owner which identifies this state, even if the description, code, or indication of location is not sufficient to direct the delivery of first-class United States mail to the apparent owner; (2) if the United States postal zip code associated with the apparent owner is for a post office located in the state, the state is deemed to be the state of the last-known address of the apparent owner unless other records associated with the apparent owner specifically identify the physical address of the apparent owner to be in another state; (3) if the address under the foregoing provision is in another state, the other state is deemed to be the state of the last-known address of the apparent owner; (4) the address of the apparent owner of a life or endowment insurance policy or annuity contract or its proceeds is presumed to be the address of the insured or annuitant if a person other than the insured or annuitant is entitled to the amount owed under the policy or contract and the address of the other person is not known by the insurance company and cannot be determined.

Revised Uniform Unclaimed Property Act § 302(2016) provides that the administrator may take custody of property that is presumed abandoned, whether located in this state, another state, or a foreign country if: (1) the last-known address of the apparent owner in the records of the holder is in this state; (2) the records of the holder do not reflect the identity or last-known address of the apparent owner, but the administrator has determined that the last-known address of the apparent owner is in this state.

Revised Uniform Unclaimed Property Act § 303(a)(2016) provides that, except as in § 303(b), if records of a holder reflect multiple addresses for an apparent owner and this state is the state of the most recently recorded address, this state may take custody of property presumed abandoned, whether located in this state or another state. Revised Uniform Unclaimed Property Act § 303(b)(2016) provides that if it appears from records of the holder that the most recently recorded address of the

apparent owner under the foregoing provision is a temporary address and this state is the state of the next most recently recorded address that is not a temporary address, this state may take custody of the property presumed abandoned.

Revised Uniform Unclaimed Property Act § 304(a)(2016) provides that, except as provided in § 304(b) or §§ 302 or 303, the administrator may take custody of property presumed abandoned, whether located in this state, another state, or a foreign country, if the holder is domiciled in this state or is this state or a governmental subdivision, agency, or instrumentality of this state, and (1) another state or foreign country is not entitled to the property because there is no last-known address of the apparent owner or other person entitled to the property in the records of the holder, or (2) the state or foreign country of the last-known address of the apparent owner or other person entitled to the property does not provide for custodial taking of the property. Revised Uniform Unclaimed Property Act § 304(b)(2016) provides that property is not subject to custody of the administrator under the foregoing provision if the property is specifically exempt from custodial taking under the law of this state or the state or foreign country of the last-known address of the apparent owner. Revised Uniform Unclaimed Property Act § 304(c)(2016) provides that if a holder's state of domicile has changed since the time property was presumed abandoned, the holder's state of domicile in this provision is deemed to be the state where the holder was domiciled at the time the property was presumed abandoned.

Revised Uniform Unclaimed Property Act § 305(2016) provides that, except as provided in §§ 302, 303, or 304, the administrator may take custody of property presumed abandoned whether located in this state or another state if (1) the transaction out of which the property arose took place in this state; (2) the holder is domiciled in a state that does not provide for the custodial taking of the property, except that if the property is specifically exempt from custodial taking under the law of the state of the holder's domicile, the property is not subject to the custody of the administrator; and (3) the last-known address of the apparent owner or other person entitled to the property is unknown or in a state that does not provide for the custodial taking of the property, except that if the property is specifically exempt from custodial taking under the law of the state of the last-known address, the property is not subject to the custody of the administrator.

Revised Uniform Unclaimed Property Act § 306(2016) provides that the administrator may take custody of sums payable on a traveler's check, money order, or similar instrument presumed abandoned to the extent permissible under [12 U.S.C.A. §§ 2501 to 2503](#).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Standard Oil Co. v. State of N.J.](#), by [Parsons](#), 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
As to the validity of such acts, see [§ 45](#).
- ² [Realty Associates of Portland, Or. v. Women's Club](#), 230 Or. 481, 369 P.2d 747 (1962).
- ³ [§ 57](#).
- ⁴ [Unif. Unclaimed Property Act § 4](#) (1995).
- ⁵ [Realty Associates of Portland, Or. v. Women's Club](#), 230 Or. 481, 369 P.2d 747 (1962).
- ⁶ [Alvarez v. Pappas](#), 229 Ill. 2d 217, 321 Ill. Dec. 712, 890 N.E.2d 434 (2008).
- ⁷ [Boswell v. Citronelle-Mobile Gathering, Inc.](#), 292 Ala. 344, 294 So. 2d 428 (1974).
- ⁸ [Douglas Aircraft Co. v. Cranston](#), 58 Cal. 2d 462, 24 Cal. Rptr. 851, 374 P.2d 819, 98 A.L.R.2d 298 (1962).
- ⁹ [State v. Green](#), 456 So. 2d 1309 (Fla. 3d DCA 1984).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 45

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

III. Rights of State to Property

A. In General

§ 45. Validity of statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 11 to 13

A.L.R. Library

[Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025](#)

Statutes granting states the right to claim abandoned or unclaimed property have been upheld as valid as against the claim that they impair obligations of contract in violation of the federal and state constitutions.¹ However, other statutes have been held unconstitutional as violating the obligation of contract² or where the statute was enacted subsequent to creation of the obligations.³

The right of a state to take charge of apparently abandoned and unclaimed property is a legislative power which rests upon the State's right to provide for the care and custody of property the owners of which have not been heard of for so long as to raise a presumption that they are dead or have abandoned the property.⁴ However, to give the state courts jurisdiction, with respect to tangible property, the res must be within the territorial limits of the state.⁵

The holder of abandoned or unclaimed property may attack the validity of a statute providing for escheat to or custody by the State only insofar as his or her rights are adversely affected by the statute.⁶ If he or she is relieved of all liability to the owner when he or she surrenders the property to the State, then he or she has no standing to attack the statute.⁷ The result is otherwise if surrender to the State will not discharge him or her from liability.⁸ The usual ground of attack is that the statute is so deficient in its provisions for notice and opportunity for hearing that the owner of the property will not be bound by any proceeding taken by the State under it.⁹

Observation:

Courts have held that states have a rational basis for amending their versions of the Uniform Unclaimed Property Act to retroactively reduce the presumptive abandonment period for unredeemed money orders¹⁰ or unclaimed traveler's checks.¹¹ Revenue raising is a legitimate legislative purpose for the purposes of such an analysis.¹²

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Footnotes

- ¹ Security Sav. Bank v. State of California, 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391 (1923); *In re Certain Moneys in Possession and Custody of Union Trust Co. of Pittsburgh, Pa.*, 359 Pa. 363, 59 A.2d 154 (1948); *In re Philadelphia Elec. Co.*, 352 Pa. 457, 43 A.2d 116 (1945) (pointing out that the constitutional guaranty against impairment of obligation of contract is subject to appropriate exercise of the State's police power).
- ² Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).
- ³ Standard Oil Co. v. State of N.J., by Parsons, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
- ⁴ Provident Institution for Sav. in Town of Boston v. Malone, 221 U.S. 660, 31 S. Ct. 661, 55 L. Ed. 899 (1911).
- ⁵ Standard Oil Co. v. State of N.J., by Parsons, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
- ⁶ Provident Institution for Sav. in Town of Boston v. Malone, 221 U.S. 660, 31 S. Ct. 661, 55 L. Ed. 899 (1911).
- ⁷ Anderson Nat. Bank v. Lockett, 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944).
- ⁸ Standard Oil Co. v. State of N.J., by Parsons, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
- ⁹ Standard Oil Co. v. State of N.J., by Parsons, 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
- ¹⁰ Memo Money Order Co., Inc. v. Sidamon-Eristoff, 754 F. Supp. 2d 661 (D.N.J. 2010) (applying New Jersey law; period reduced from seven to three years).
- ¹¹ American Exp. Travel Related Services Co., Inc. v. Kentucky, 641 F.3d 685 (6th Cir. 2011) (applying Kentucky law; period reduced from 15 to seven years).
- ¹² American Exp. Travel Related Services Co., Inc. v. Kentucky, 641 F.3d 685 (6th Cir. 2011) (applying Kentucky law).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 46

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

III. Rights of State to Property

A. In General

§ 46. Rights as between states

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West's Key Number Digest

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Only the State in which tangible property is located may escheat such property.¹

According to the common law concept of mobilia sequuntur personam, intangible personal property is found at the domicile of its owner.² Intangible property is subject to escheat only by the state of the last known address of the creditor, as shown by the books and records of the debtor.³

Observation:

Under the terms of the Uniform Unclaimed Property Act, another state can claim property in the custody of the first state if it can establish, among other circumstances, that the domicile or location of the record owner as being in the first state was erroneous, that the escheat occurred only because the other state did not have escheat laws at the time of the surrender of the property, or that the other property of the record owner has escheated to the other state.⁴ The Act also provides the time limits and procedure under which the other state must make its claim.⁵ Finally, the Act also acknowledges that states may elect to enter into interstate compacts to share information regarding abandoned property or to enter into other reciprocal agreements with regard to abandoned property.⁶

When the beneficial owners of unclaimed securities distributions cannot be identified or located, the State in which a financial intermediary receiving such distributions is incorporated has the right to claim funds belonging to the unlocatable and unidentifiable beneficial owner.⁷ If a state can establish by reference to the debtor's records that the creditors who were owed particular securities distributions had last known addresses in that state, such state's right to escheat the property supersedes the right of the State of the debtor's incorporation to claim the property.⁸

Caution:

The use of statistical sampling by a state seeking to escheat unclaimed securities distributions held by intermediary banks, brokers, and depositories for beneficial owners who cannot be located—in an attempt to show that most addresses of creditors with respect to such distributions were in the state—so as to vary the application of the rule under which the state of a creditor's last known address as shown by the debtor's books and records has the right to escheat intangible personal property is not allowed.⁹

A federal statute provides that, under designated circumstances, the state of purchase is entitled to escheat or take custody of any sum payable on a money order, traveler's check, or other similar written instrument (other than a third-party bank check) on which a banking or financial organization or a business association is directly liable where such instrument has been abandoned.¹⁰ This statute recognizes that many but fewer than all states have adopted the Uniform Unclaimed Property Act or similar law and that the federal statute should be construed to function harmoniously with the Uniform Act in determining which of several states have superior claims to abandoned intangible property.¹¹

Other statutes may affect a finder's rights where the property is removed from public lands as in the case of the Federal Archaeological Resources Protection Act.¹²

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions applicable to property subject to recovery by another state are at Revised Uniform Unclaimed Property Act § 902(2016). Revised Uniform Unclaimed Property Act § 902(a)(2016) provides that property held under the Act by the administrator is subject to the right of another state to take custody of the property if (1) the property was paid or delivered to the administrator because the records of the holder did not reflect a last-known address in the other state of the apparent owner and (A) the other state establishes that the last-known address of the apparent owner or other person entitled to the property was in the other state or (B) under the law of the other state, the property has become subject to a claim by the other state of abandonment; (2) the records of the holder did not accurately identify the owner of the property, the last-known address of the owner was in another state, and, under the laws of the other state, the property has become subject to a claim by the other state of abandonment; (3) the property was subject to the custody of the administrator of the state and, under the law of the state of domicile of the holder, the property has become subject to a claim by the state of domicile of the holder of abandonment; or (4) the property (A) is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered to the administrator and (B) under the laws of the other state, has become subject to a claim by the other state of abandonment.

Under the Revised Uniform Unclaimed Property Act of 2016, the procedure under which a state must make its claim to property is at Revised Uniform Unclaimed Property Act § 902(b) to (d)(2016).

Under the Revised Uniform Unclaimed Property Act of 2016, the provision allowing for interstate and international agreements and cooperation is at Revised [Uniform Unclaimed Property Act § 1202\(2016\)](#).

[END OF SUPPLEMENT]

§ 46. Rights as between states, 1 Am. Jur. 2d Abandoned, Lost, and Unclaimed...

- ¹ Delaware v. New York, 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ² Delaware v. New York, 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ³ State of Tex. v. State of N.J., 379 U.S. 674, 85 S. Ct. 626, 13 L. Ed. 2d 596 (1965), opinion supplemented, 380 U.S. 518, 85 S. Ct. 1136, 14 L. Ed. 2d 49 (1965).
- ⁴ Unif. Unclaimed Property Act § 14(a) (1995).
- ⁵ Unif. Unclaimed Property Act § 14(b) (1995).
- ⁶ Unif. Unclaimed Property Act § 23 (1995).
- ⁷ Delaware v. New York, 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ⁸ Delaware v. New York, 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ⁹ Delaware v. New York, 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ¹⁰ 12 U.S.C.A. § 2503(3).
- ¹¹ Travelers Exp. Co., Inc. v. State of Minn., 506 F. Supp. 1379 (D. Minn. 1981), judgment aff'd, 664 F.2d 691 (8th Cir. 1981).
- ¹² § 2.

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 47

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Abandoned, Lost, and Unclaimed Property

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III. Rights of State to Property

A. In General

§ 47. Procedure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 11 to 13

Forms

Right of State to Property—Property Subject to Unclaimed Property Law: see [Am. Jur. Legal Forms 2d, Abandoned, Lost, and Unclaimed Property §§ 1:1 et seq.](#) [[WestlawNext®\(r\) Search Query](#)]

Notice—Finding of lost property—To public officer—Short Form: see [Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property](#) [[WestlawNext®\(r\) Search Query](#)]

Claim—By owner of unclaimed property—For property delivered to state or proceeds from sale of property: see [Am. Jur. Pleading and Practice Forms, Abandoned, Lost, and Unclaimed Property](#) [[WestlawNext®\(r\) Search Query](#)]

A state may generally not escheat abandoned or unclaimed property administratively without judicial action.¹ On the other hand, so long as there has been a seizure of the property at the commencement of the suit,² or its equivalent,³ there is no constitutional reason why a state may not proceed administratively to take over the care of abandoned property rather than adopt a plan through judicial process.⁴ Such procedure will be upheld if there is ample provision for notice to claimants and for administrative and judicial hearing of their claims and payment of the same.⁵ Where these requirements have been met, judgment of escheat by the first state bars a second escheat to a different state.⁶

A proceeding by the State to take over unclaimed and apparently abandoned property has been characterized as a proceeding in personam, so far as the stakeholder is concerned,⁷ as in rem⁸ or quasi in rem⁹ so far as the owner is concerned, and as strictly in rem so far as concerns other claimants.

Nevertheless, when the State undertakes the protection of abandoned claims, it would be beyond a reasonable requirement to compel the State to comply with conditions that may be quite proper as between the contracting parties.¹⁰

A claim must be made by the rightful owner of the property.¹¹ Thus, for example, a claim of the estate of a deceased

performer to possession of the proceeds of unrefunded concert tickets does not in any way prevent the proceeds from being deemed abandoned property under a state statute providing for state custody of such unclaimed funds because only a claim by the rightful owners (that is, the ticketholders) would have prevented the State's right to possession of the funds.¹²

Observation:

Under the Uniform Unclaimed Property Act, the State may decline to accept property which it considers to have a value less than the expenses of notice and sale.¹³

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding the disposition of property having no substantial value are at Revised Uniform Unclaimed Property Act § 609(2016). Revised Uniform Unclaimed Property Act § 609(a)(2016) provides that, if the administrator takes custody of property delivered under the Act and later determines that the property has no substantial commercial value or that the cost of disposing of the property will exceed the value of the property, the administrator may return the property to the holder or destroy or otherwise dispose of the property. Revised Uniform Unclaimed Property Act § 609(b)(2016) provides that an action or proceeding may not be commenced against the state, an agency of the state, the administrator, another officer, employee, or agent of the state, or a holder for or because of an act of the administrator under this provision, except for intentional misconduct or misfeasance. A note to the provision states that a state should determine whether subsection (b) is covered by its sovereign immunity tort claims act and decide whether to include or not include that subsection.

[END OF SUPPLEMENT]

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Footnotes

- ¹ [State v. Phoenix Sav. Bank & Trust Co.](#), 60 Ariz. 138, 132 P.2d 637 (1942).
- ² [Anderson Nat. Bank v. Lueckett](#), 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944); [State v. Northwestern Nat. Bank of Minneapolis](#), 219 Minn. 471, 18 N.W.2d 569 (1945).
- ³ [Standard Oil Co. v. State of N.J., by Parsons](#), 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951) (seizure of stock certificates and dividends effected by personal service upon corporation).
- ⁴ [Connecticut Mut. Life Ins. Co. v. Moore](#), 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).
- ⁵ [Connecticut Mut. Life Ins. Co. v. Moore](#), 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).
- ⁶ [Standard Oil Co. v. State of N.J., by Parsons](#), 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).
- ⁷ [Security Sav. Bank v. State of California](#), 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391 (1923).

- ⁸ Anderson Nat. Bank v. Lueckett, 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944).
- ⁹ Security Sav. Bank v. State of California, 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391 (1923).
- ¹⁰ Connecticut Mut. Life Ins. Co. v. Moore, 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).
- ¹¹ Presley v. County of Nassau of State, 148 Misc. 2d 125, 560 N.Y.S.2d 173 (Sup 1990), judgment aff'd, 188 A.D.2d 594, 591 N.Y.S.2d 72 (2d Dep't 1992).
- ¹² Presley v. County of Nassau of State, 148 Misc. 2d 125, 560 N.Y.S.2d 173 (Sup 1990), judgment aff'd, 188 A.D.2d 594, 591 N.Y.S.2d 72 (2d Dep't 1992).
- ¹³ Unif. Unclaimed Property Act § 17(a) (1995).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 48

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

III. Rights of State to Property

A. In General

§ 48. Procedure—Notice to owners and claimants

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 11 to 13

Forms

Notice—To apparent owners of unclaimed property: see [Am. Jur. Legal Forms 2d, Abandoned, Lost, and Unclaimed Property §§ 1:1 et seq.](#) [WestlawNext®(r) Search Query]

The owners and possible claimants of property which a state seeks to seize as abandoned property must be given reasonable notice and opportunity to be heard.¹ An adequate method of statutory publication of notice to the unknown owners and possible claimants satisfies the requirements of due process.² Due process does not require an affidavit of impossibility or impracticability of personal service before publication of a notice.³

The Uniform Unclaimed Property Act requires the state administrator to publish lists of notices of abandoned property delivered or paid over to the administrator, and the Act mandates the minimum contents of such notices.⁴ The Act sets forth the minimum requirements for advertisement, and the administrator may publish more frequently or extensively.⁵ The Act does not establish a specific time for the publication so that the administrator can choose a time that will provide the best exposure and flexibility in scheduling the workload and personnel available.⁶

The Act further prescribes that claims be made on forms provided by the State,⁷ be administratively adjudicated within 90 days,⁸ and be paid within 30 days if allowed.⁹ If no decision is made within 90 days, or if a person is aggrieved by the decision, the person may commence an action to determine the claim.¹⁰ The administrative determination does not operate as collateral estoppel or as res judicata to the action.¹¹

Where the State assumes protective custody of presumably abandoned property, and it has an ultimate right of escheat, notice must be given to the owners of such property that the State is taking protective custody.¹²

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding notices by the administrator are at Revised Uniform Unclaimed Property Act § 503(2016). The Comment to this section notes that, where prior Acts required mere publication of lists by administrators, the 2016 Act puts a greater emphasis on facilitating administrator outreach through publication and websites or similar databases to apparent owners to increase awareness of their property and how to claim it.

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions requiring the administrator to allow or deny a claim are at Revised Uniform Unclaimed Property Act § 904(2016). Revised Uniform Unclaimed Property Act § 904(a)(2016) requires the administrator to pay or deliver property to a claimant if the administrator receives evidence sufficient to establish to the administrator's satisfaction that the claimant is the owner of the property. Revised Uniform Unclaimed Property Act § 904(b)(2016) requires the administrator to allow or deny the claim and give the claimant notice in a record of the decision not later than 90 days after a claim is filed. Revised Uniform Unclaimed Property Act § 904(c)(2016) provides that, if the claim is denied (1) the administrator must inform the claimant of the reason for the denial and specify what additional evidence, if any, is required for the claim to be allowed; (2) the claimant may file an amended claim with the administrator or commence an action as provided in the Act; and (3) the administrator must consider an amended claim as an initial claim. Revised Uniform Unclaimed Property Act § 904(d)(2016) provides that if the administrator does not take action on a claim during the 90-day period following the filing of a claim, the claim is deemed denied.

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions requiring the administrator act within 30 days after a claim is allowed to pay or deliver to the owner the property or the net proceeds of a sale of the property are at Revised Uniform Unclaimed Property Act § 905(2016).

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding claims for property by the person claiming to be the owner are at Uniform Unclaimed Property Act § 903(2016). Uniform Unclaimed Property Act § 903(a)(2016) provides for the putative owner's filing a claim for the property on a form prescribed by the administrator. Uniform Unclaimed Property Act § 903(b)(2016) allows the administrator to waive the claim-filing requirement and to pay or deliver property directly to a person if (1) the person receiving the property or payment is shown to be the apparent owner included in a report of the holder; (2) the administrator reasonably believes the person is entitled to receive the property or payment; and (3) the property has a value of less than \$250.

[END OF SUPPLEMENT]

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Footnotes

¹ [Security Sav. Bank v. State of California](#), 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391 (1923).

² [Standard Oil Co. v. State of N.J.](#), by [Parsons](#), 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951).

³ [Security Sav. Bank v. State of California](#), 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391 (1923).

⁴ [Unif. Unclaimed Property Act § 9](#) (1995).

⁵ [Unif. Unclaimed Property Act § 9](#) (1995), Comment.

6 Unif. Unclaimed Property Act § 9 (1995), Comment.

7 Unif. Unclaimed Property Act § 15(a) (1995).

8 Unif. Unclaimed Property Act § 15(b) (1995).

9 Unif. Unclaimed Property Act § 15(c) (1995).

10 Unif. Unclaimed Property Act § 16 (1995).

11 Unif. Unclaimed Property Act § 15 (1995), Comment.

12 Anderson Nat. Bank v. Lueckett, 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944).

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 49

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Abandoned, Lost, and Unclaimed Property

Jeffrey J. Shampo, J.D.

III. Rights of State to Property

A. In General

§ 49. State's custody of property; effect on rights of holders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 11 to 13

Once property is presumed abandoned, a designated government official, such as the Comptroller of Public Accounts, assumes responsibility for the property and essentially steps into the shoes of the absent owner.¹

Under the Uniform Unclaimed Property Act, upon paying or delivering property to the state administrator, the State assumes custody and responsibility for the safekeeping of the property.² When a holder pays or delivers property to the administrator in good faith, he or she is relieved of all liability arising thereafter with respect to the property,³ and the administrator must defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the administrator.⁴ The holder remains entitled to reimbursement of any charges relating to property which was removed from a safe-deposit box; such charges are limited to the costs of opening the box and to any amounts owing pursuant to a contract between the holder and the owner.⁵

Observation:

Under the Uniform Unclaimed Property Act, subject to certain limiting conditions, a holder may deliver property to the state before it is presumed to be abandoned.⁶

Where a holder turns the property over to the State and then subsequently chooses to honor a request for payment or delivery by the original owner, the holder is entitled to reimbursement of the property from the State upon filing proper proofs.⁷ A holder who has delivered property other than money to the state may obtain the property back from the state upon proof that the original owner has made demand of the holder for the property;⁸ such proof in the form of the holder's affidavit is

sufficient.⁹

The State is empowered to sell the property within three years from its delivery to the state, under a procedure and subject to certain restrictions imposed by the Uniform Act.¹⁰ A purchaser of such property at a sale conducted by the State takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them.¹¹ The State is mandated to deposit the proceeds of such sales to establish a fund from which claims must be paid.¹² An optional provision of the Uniform Act expressly permits the deduction of certain costs and expenses relating to the possession and sale to be deducted from the amount deposited.¹³

If the State determines that the property has no substantial commercial value, it may destroy the property and is immune from liability for such act.¹⁴

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provision regarding the administrator's assumption of custody and responsibility for safekeeping of the property upon delivery to the administrator, and the release of liability of the holder, is at Revised Uniform Unclaimed Property Act § 604(a)(2016).

Under the Revised Uniform Unclaimed Property Act of 2016, the provision regarding the defense and indemnification of the holder by the state is at Revised Uniform Unclaimed Property Act § 604(b).

Under the Revised Uniform Unclaimed Property Act of 2016, the provision regarding property removed from a safe-deposit box is at Revised Uniform Unclaimed Property Act § 606(2016), which provides that property removed from a safe-deposit box and delivered under the Act to the administrator is subject to the holder's right to reimbursement for the cost of opening the box and a lien or contract providing reimbursement to the holder for unpaid rental charges for the box. The administrator is required to reimburse the holder from the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding the disposition of property having no substantial value are at Revised Uniform Unclaimed Property Act § 609(2016). Revised Uniform Unclaimed Property Act § 609(a)(2016) provides that, if the administrator takes custody of property delivered under the Act and later determines that the property has no substantial commercial value or that the cost of disposing of the property will exceed the value of the property, the administrator may return the property to the holder or destroy or otherwise dispose of the property. Revised Uniform Unclaimed Property Act § 609(b)(2016) provides that an action or proceeding may not be commenced against the state, an agency of the state, the administrator, another officer, employee, or agent of the state, or a holder for or because of an act of the administrator under this provision, except for intentional misconduct or misfeasance. A note to the provision states that a state should determine whether subsection (b) is covered by its sovereign immunity tort claims act and decide whether to include or not include that subsection.

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding the sale of abandoned property by the administrator are at Revised Uniform Unclaimed Property Act §§ 701 to 705(2016).

Revised Uniform Unclaimed Property Act § 704(2016) provides that a purchaser of property at a sale conducted by the administrator under the Act takes the property free of all claims of the owner, a previous holder, or a person claiming through the owner or holder, and requires that the administrator execute documents necessary to complete the transfer of ownership to the purchaser.

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding the administrator's deposit of the proceeds from the sale of property under the Act are at Revised Uniform Unclaimed Property Act § 801(2016).

Revised Uniform Unclaimed Property Act § 803(2016) provides that, before making a deposit of funds received under the Act to the designated fund, the administrator may deduct (1) expenses of disposition of property delivered to the administrator under the act; (2) costs of mailing and publication in connection with such property; (3) reasonable service charges; and (4) expenses incurred in examining records of or collecting property from a putative holder or holder.

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Texas Dept. of Banking v. Mount Olivet Cemetery Ass'n, 27 S.W.3d 276 \(Tex. App. Austin 2000\).](#)
- ² [Unif. Unclaimed Property Act § 10\(b\) \(1995\).](#)
- ³ [Unif. Unclaimed Property Act § 10\(b\) \(1995\).](#)
- ⁴ [Unif. Unclaimed Property Act § 10\(f\) \(1995\).](#)
- ⁵ [§ 50.](#)
- ⁶ [Unif. Unclaimed Property Act § 17\(b\) \(1995\).](#)
As to the presumption of abandonment under the Act, see [§ 57](#).
- ⁷ [Unif. Unclaimed Property Act § 10\(c\) \(1995\).](#)
- ⁸ [Unif. Unclaimed Property Act § 10\(d\) \(1995\).](#)
- ⁹ [Unif. Unclaimed Property Act § 10\(e\) \(1995\).](#)
- ¹⁰ [Unif. Unclaimed Property Act § 12\(a\) \(1995\).](#)
As to particular rules pertaining to corporate securities, see [§ 51](#).
- ¹¹ [Unif. Unclaimed Property Act § 12\(c\) \(1995\).](#)
- ¹² [Unif. Unclaimed Property Act § 13 \(1995\).](#)
- ¹³ [Unif. Unclaimed Property Act § 13\(b\) \(1995\).](#)
- ¹⁴ [Unif. Unclaimed Property Act § 18 \(1995\).](#)

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1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 50

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§ 50. Bank deposits; safe-deposit boxes

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[Validity, construction, and application of lost or abandoned goods statutes](#), 23 A.L.R.4th 1025

Forms

Notice—Names of apparent owners of unclaimed funds held by bank: see [Am. Jur. Legal Forms 2d, Abandoned, Lost, and Unclaimed Property §§ 1:1 et seq.](#) [[WestlawNext®\(r\) Search Query](#)]

A bank has no inherent right to retain bank deposits in the event they are not claimed by depositors.¹ A state may compel the surrender of deposits in dormant accounts when there is substantial ground for the belief that they have been abandoned or forgotten, especially where it acquires them subject to all lawful demands of the depositors.²

Statutes requiring payment over to the state of deposits which have gone unclaimed for a specified number of years have generally been upheld as constitutional, whether they are of the custodial type, the State merely receiving and holding the money as depository subject to the claim of the depositor or his or her representatives,³ or whether they are of the escheat type, the State taking title.⁴ Savings banks are not unconstitutionally discriminated against by making applicable to them alone the provisions of a state statute providing for disposition of deposits which have remained inactive and unclaimed for 30 years.⁵

State statutes requiring banks to report unclaimed deposits to the State,⁶ and providing for the disposition of unclaimed bank deposits, whether the bank is a going concern⁷ or in liquidation,⁸ may validly be applied to national banks.⁹ However, a statute requiring “escheat to the state” of all balances in deposit accounts remaining unclaimed and inactive for more than 20 years was held to be invalid, to the extent that it interfered with the rights of national banks to receive and accept deposits.¹⁰

The Uniform Unclaimed Property Act presumes abandonment of a demand, savings, or matured time deposit following five years of inactivity.¹¹ The Act also presumes the abandonment of tangible and intangible property held in a safe-deposit box or any similar safekeeping repository unclaimed for five years after the expiration of the lease or rental period.¹²

Under the Uniform Act, the owner of interest-earning bonds or bank deposits must receive interest or income which the property earned while in the State’s custody, for a maximum period of 10 years from the date of its delivery to the state.¹³ In the event that the State has accrued interest on property which the holder has turned over to the State, and then the holder honors the owner’s claim and seeks reimbursement from the State, the holder is entitled to any increase in the value of the property due to interest.¹⁴

Under the Uniform Unclaimed Property Act, the holder who turns property over to the State remains entitled to reimbursement of certain charges relating to property which was removed from a safe-deposit box.¹⁵ Such charges are limited to the costs of opening the box and to any amounts owing pursuant to a contract between the holder and the owner.¹⁶

CUMULATIVE SUPPLEMENT

Statutes:

The Revised Uniform Unclaimed Property Act of 2016 provides, at Revised Uniform Unclaimed Property Act § 205(2016), that tangible property held in a safe-deposit box and proceeds from a sale of the property by the holder permitted by state law other than the Act are presumed abandoned if the property remains unclaimed by the apparent owner five years after the earlier of the (1) expiration of the lease or rental period for the box or (2) earliest date when the lessor of the box is authorized by state law other than the Act to enter the box and remove or dispose of the contents without the consent or authorization of the lessee.

The Revised Uniform Unclaimed Property Act of 2016 provides, at Revised Uniform Unclaimed Property Act § 210(5)(2016), that a payroll card or demand, savings, or time deposit, including a deposit that is automatically renewable, is presumed abandoned if it is unclaimed by the apparent owner during the three-year period after the maturity of the deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renewal at or about the time of the renewal.

The Revised Uniform Unclaimed Property Act of 2016 provides, at Revised Uniform Unclaimed Property Act § 607(a)(2016), that if property other than money is delivered to the administrator, the owner is entitled to receive from the administrator income or gain realized or accrued on the property before the property is sold. If the property was an interest-bearing demand, savings, or time deposit, the administrator shall pay interest at the lesser of the legal rate or the rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ends on the earlier of the expiration of 10 years after its delivery or the date on which payment is made to the owner. The Act provides, at Revised Uniform Unclaimed Property Act § 607(b)(2016), that interest on interest-bearing property is not payable under this provision for any period before the effective date of the Act, unless authorized by the law superseded by the Act.

[END OF SUPPLEMENT]

Footnotes

- ¹ Delaware v. New York, 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ² Delaware v. New York, 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ³ Anderson Nat. Bank v. Lockett, 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944).
- ⁴ Security Sav. Bank v. State of California, 263 U.S. 282, 44 S. Ct. 108, 68 L. Ed. 301, 31 A.L.R. 391 (1923).
- ⁵ Provident Institution for Sav. in Town of Boston v. Malone, 221 U.S. 660, 31 S. Ct. 661, 55 L. Ed. 899 (1911).
- ⁶ Roth v. Delano, 338 U.S. 226, 70 S. Ct. 22, 94 L. Ed. 13 (1949).
- ⁷ Anderson Nat. Bank v. Lockett, 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944).
- ⁸ Roth v. Delano, 338 U.S. 226, 70 S. Ct. 22, 94 L. Ed. 13 (1949).
- ⁹ In re Certain Moneys in Possession and Custody of Union Trust Co. of Pittsburgh, Pa., 359 Pa. 363, 59 A.2d 154 (1948).
- ¹⁰ First Nat. Bank of San Jose v. State of Cal., 262 U.S. 366, 43 S. Ct. 602, 67 L. Ed. 1030 (1923).
- ¹¹ Unif. Unclaimed Property Act § 2(a)(5) (1995).
- ¹² Unif. Unclaimed Property Act § 3 (1995).
- ¹³ Unif. Unclaimed Property Act § 11 (1995).
- ¹⁴ Unif. Unclaimed Property Act § 15(d) (1995).
- ¹⁵ Unif. Unclaimed Property Act § 10(g) (1995).
- ¹⁶ Unif. Unclaimed Property Act § 10(g) (1995).

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III. Rights of State to Property

B. Particular Types of Property

§ 51. Corporate stock and dividends

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West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 11 to 13

Stock certificates and unpaid dividends thereon are subject to escheat to, or to be taken over by, the State when the whereabouts of the owners is unknown for such length of time, and under such circumstances, as warrant the conclusion of abandonment.¹ Stock and unpaid dividends, like other forms of intangible property, are subject to escheat only by the state of the last known address of the holder as shown by the books and records of the association.²

On dissolution, absent contrary legislation, moneys representing unclaimed distributive shares in the corporation may escheat to the State under appropriate escheat statutes if the statutory requirements have been met.³

One state's right to escheat unclaimed securities distributions will supersede a competing state's right to escheat if the State can establish by reference to the debtors' records that the creditors who were owed particular securities distributions had their last known addresses in that state.⁴ The State in which a financial intermediary receiving unclaimed securities distributions is incorporated has the right to escheat funds belonging to the beneficial owners of such distributions who cannot be identified or cannot be located.⁵ Where funds consisting of unclaimed securities distributions are held by intermediary banks, brokers, and depositories for beneficial owners who cannot be identified or cannot be located, and where the intermediaries claim no property interest in such funds, they become escheatable.⁶

Under the Uniform Unclaimed Property Act, the owner of dividend paying stock which has been paid or deposited with the State is entitled to receive any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money.⁷ Additionally, restrictions are imposed upon any sale of the securities requiring their sale to be at prevailing market prices, to be determined by the type of stock and whether it is publicly traded at the time of its delivery or sale.⁸

CUMULATIVE SUPPLEMENT

Statutes:

The Revised Uniform Unclaimed Property Act of 2016 provides, at Revised Uniform Unclaimed Property Act § 607(a)(2016), that if property other than money is delivered to the administrator, the owner is entitled to receive from the administrator income or gain realized or accrued on the property before the property is sold. If the property was an interest-bearing demand, savings, or time deposit, the administrator shall pay interest at the lesser of the legal rate or the rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ends on the earlier of the expiration of 10 years after its delivery or the date on which payment is made to the owner. The Act provides, at Revised Uniform Unclaimed Property Act § 607(b)(2016), that interest on interest-bearing property is not payable under this provision for any period before the effective date of the Act, unless authorized by the law superseded by the Act.

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding the disposal of securities are at Revised Uniform Unclaimed Property Act § 702(2016). Revised Uniform Unclaimed Property Act § 702(a)(2016) provides that the administrator may not sell or otherwise liquidate a security until three years after the administrator receives the security and gives the apparent owner notice that the administrator holds the security. Revised Uniform Unclaimed Property Act § 702(b)(2016) provides that the administrator may not sell a security listed on an established stock exchange for less than the price prevailing on the exchange at the time of sale and may sell a security not listed on an established exchange by any commercially-reasonable method.

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Standard Oil Co. v. State of N.J.](#), 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951) (unclaimed for 14 years); [Canel v. Topinka](#), 212 Ill. 2d 311, 288 Ill. Dec. 623, 818 N.E.2d 311 (2004) (recognizing rule but holding unclaimed stock was not deemed abandoned at common law); [State v. New Jersey Nat. Bank & Trust Co.](#), 62 N.J. 50, 298 A.2d 65 (1972) (unclaimed for 14 years).
- ² [State of Tex. v. State of N.J.](#), 379 U.S. 674, 85 S. Ct. 626, 13 L. Ed. 2d 596 (1965), opinion supplemented, 380 U.S. 518, 85 S. Ct. 1136, 14 L. Ed. 2d 49 (1965).
- ³ [State by Parsons v. Fidelity Union Trust Co.](#), 25 N.J. 387, 136 A.2d 636 (1957).
- ⁴ [Delaware v. New York](#), 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
As to rights as between states, see § 46.
- ⁵ [Delaware v. New York](#), 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ⁶ [Delaware v. New York](#), 507 U.S. 490, 113 S. Ct. 1550, 123 L. Ed. 2d 211 (1993).
- ⁷ [Unif. Unclaimed Property Act § 11](#) (1995).
- ⁸ [Unif. Unclaimed Property Act § 12\(b\)](#) (1995).

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B. Particular Types of Property

§ 52. Insurance funds

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West's Key Number Digest

West's Key Number Digest, [Abandoned and Lost Property](#)  5, 11 to 13

A state has the power to seize abandoned or unclaimed insurance moneys.¹ A statute requiring payment to the State of unclaimed proceeds of insurance policies will be upheld provided the classification established described property which may fairly be said to be abandoned.² Such right has been upheld where a foreign insurance company was doing business within the state and the policies were issued for delivery within the state upon the lives of persons then resident there, at least where it does not appear that the insured persons after delivery of the policies ceased to be residents and that the beneficiaries are not residents at maturity of the policies.³

Under the Uniform Unclaimed Property Act, the demands of an insurance company for a refund of money remitted as presumed abandoned property to the state is properly rejected where the insurance company's obligation to its insured-payee also creates a conditional obligation that is to be reported and paid or delivered to the state if the insured-payee, as the owner of the obligation, does not claim it or present a check for payment within a five-year period after its issuance.⁴

CUMULATIVE SUPPLEMENT

Cases:

Three amendments to unclaimed property act that required process for insurers to follow to make insurance proceeds more readily available to beneficiaries upon death of an insured, generally shortened timeframe for escheat of unclaimed insurance proceeds, and applied retroactively were remedial, rather than substantive, and thus facially valid, where purpose of law was to protect interest of missing owners of property while providing benefit of all unclaimed property to go to all people of state, and legislative statement specifically named amendments as remedial. [Fla. Const. art. 1, § 9](#); [Fla. Stat. Ann. § 717.107 et seq.](#) [Patronis v. United Insurance Company of America](#), 299 So. 3d 1152 (Fla. 1st DCA 2020).

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Footnotes

- ¹ [Connecticut Mut. Life Ins. Co. v. Moore](#), 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948) (moneys due on life insurance policies); [Louisiana Hospital Service, Inc. v. Collector of Revenue](#), 293 So. 2d 663 (La. Ct. App. 1st Cir. 1974) (uncashed Blue Cross-Blue Shield benefit checks subject to escheat); [Treasurer and Receiver General v. John Hancock Mut. Life Ins. Co.](#), 388 Mass. 410, 446 N.E.2d 1376 (1983) (uncashed checks issued by insurer for insurance payments, agents' commissions, salaries, and vendor payments).
- ² [Connecticut Mut. Life Ins. Co. v. Moore](#), 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).
- ³ [Connecticut Mut. Life Ins. Co. v. Moore](#), 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863 (1948).
- ⁴ [Louisiana Health Service and Indem. Co. v. Tarver](#), 635 So. 2d 1090 (La. 1994).

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III. Rights of State to Property

B. Particular Types of Property

§ 53. Utility deposits and refunds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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A state, under statutory authority for such action, may take title to or custody of unclaimed deposits made with public utilities by their customers,¹ or of unclaimed refunds owing their customers, if the property may fairly be said to have been abandoned.² The Uniform Unclaimed Property Act provides that a deposit or refund owed to a subscriber by a utility is presumed abandoned one year after the deposit or refund becomes payable.³

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provision regarding the presumption of abandonment of a deposit or refund owed to a subscriber by a utility is at Revised Uniform Unclaimed Property Act § 201(12)(2016).

[END OF SUPPLEMENT]

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Footnotes

¹ [In re Philadelphia Elec. Co.](#), 352 Pa. 457, 43 A.2d 116 (1945).

² [Illinois Bell Telephone Co. v. Slattery](#), 102 F.2d 58 (C.C.A. 7th Cir. 1939); [Brooklyn Borough Gas Co. v. Bennett](#), 154 Misc. 106, 277 N.Y.S. 203 (Sup 1935).

³ [Unif. Unclaimed Property Act § 2\(a\)\(13\)](#) (1995).
As to presumptions, generally, see [§ 56](#).

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§ 54. Property in custody of court or public officer

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West's Key Number Digest

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Forms

Notice—Names of apparent owners of unclaimed property—Money or other property paid into or deposited with court—By official custodian: see [Am. Jur. Legal Forms 2d, Abandoned, Lost, and Unclaimed Property §§ 1:1 et seq.](#) [[WestlawNext®\(r\) Search Query](#)]

Property in the custody of a state court or public official which has gone unclaimed for a stated period may escheat to the State if there is statutory authority for such action.¹ However, an escheat statute which is applicable where property sought to be escheated is without a lawful owner has been held not applicable as to funds in the hands of a state official which have remained unclaimed for seven years.² A state court, acting within its statutory powers, may also determine whether funds in the possession or under the control of a federal court within the state have escheated to the State,³ and a statute authorizing such action does not unconstitutionally interfere with the federal court or invade the sovereignty of the United States.⁴ However, the power of a state to determine escheat of property within its jurisdiction does not extend to a subject matter over which Congress has exercised its power and directed a result, not only inconsistent but also incompatible with escheat by the State.⁵

Caution:

The Uniform Unclaimed Property Act provision authorizing a state treasurer to bring an action in court to enforce delivery of property when delivery was otherwise refused is unconstitutional to the extent that it authorizes the treasurer to enforce delivery of, or to collect, unclaimed property, and thus, the state treasurer has no standing to bring suit against judges and fund administrators to enforce the delivery of funds, held at the judge's court, to an unclaimed property fund.⁶

The fact that a criminal defendant's name and address were known at the time a cash bail bond was filed does not preclude a determination that the existence and location of the owner of the funds is "unknown" after the dormancy period within the meaning of an abandoned property statute so as to trigger the statutory requirements for the county clerk to report and deliver the unclaimed cash bonds as abandoned personal property to the state comptroller.⁷ The governmental officer who is the holder of presumably abandoned funds from unclaimed cash bail bonds is the proper party to a suit by the State to compel compliance with the statutory requirements for reporting and delivery of abandoned funds to the state comptroller, in light of the officer's statutory custody and control over the cash bail bonds.⁸

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Footnotes

- ¹ [Pokorny v. Wayne County, 322 Mich. 10, 33 N.W.2d 641 \(1948\).](#)
As to the duty of police officers with regard to lost property, see § 30.
- ² [Appeal of Rosenfeld, 337 Pa. 183, 10 A.2d 570 \(1940\).](#)
- ³ [U.S. v. Klein, 303 U.S. 276, 58 S. Ct. 536, 82 L. Ed. 840 \(1938\)](#) (involving moneys deposited for benefit of unknown bondholders in a federal district court suit brought by other bondholders to compel payment of the bonds); [State v. Goodbar, 297 S.W.2d 525 \(Mo. 1957\)](#) (involving unclaimed excess insurance premiums).
- ⁴ [U.S. v. Klein, 303 U.S. 276, 58 S. Ct. 536, 82 L. Ed. 840 \(1938\).](#)
- ⁵ [In re Escheat of Moneys Under Control of U. S. Dist. Court, 358 Pa. 133, 57 A.2d 256 \(1948\).](#)
- ⁶ [Farmer v. Kinder, 89 S.W.3d 447 \(Mo. 2002\)](#) (holding that the provision extends the treasurer's power beyond the limited power to act as a custodian over property).
- ⁷ [Melton v. State, 993 S.W.2d 95 \(Tex. 1999\).](#)
- ⁸ [Melton v. State, 993 S.W.2d 95 \(Tex. 1999\).](#)

1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property IV Refs.

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A.L.R. Index, Personal Property

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A.L.R. Index, Treasure Trove

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IV. Proof; Presumptions

§ 55. Abandonment or character of lost property as question of law or fact

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[Landlord's permitting third party to occupy premises rent-free as acceptance of tenant's surrender of premises, 18 A.L.R.5th 437](#)

Trial Strategy

[Abandonment of Tangible Personal Property, 25 Am. Jur. Proof of Facts 2d 685](#)

Whether the abandonment of property has occurred is generally considered a question of fact¹ for the decision of the jury,² to be ascertained from a consideration of all the facts and circumstances of the case³ and depending on upon intention and conduct.⁴ Under other authority, whether a person has relinquished his or her protected interests in property involves both factual and legal questions.⁵ Similar authority holds that abandonment is a conclusion of law or at least a determination of a mixed question of law and fact requiring the application of a legal standard to the historical-fact determinations.⁶ Further, abandonment may be declared as a matter of law where all the essential factors are admitted or indisputably proved and the inferences to be drawn from them are certain and free from doubt.⁷

Whether money found by a claimant was treasure trove or was mislaid, abandoned, or lost property is a question of fact⁸ or a jury question,⁹ or the facts may be such that as a matter of law the court will pass on its character.¹⁰ Further, what is a reasonable time for the owner to claim his or her property is ordinarily a jury question.¹¹

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Footnotes

- ¹ Brown v. Reynolds, 872 So. 2d 290 (Fla. 2d DCA 2004); Schoenholz v. Hinzman, 295 Kan. 786, 289 P.3d 1155 (2012); Cavanaugh v. O'Connell, 732 So. 2d 912 (Miss. 1999); Rieman v. Anderson, 282 Mont. 139, 935 P.2d 1122 (1997); Seven Lakes Development Co., L.L.C. v. Maxson, 2006 WY 136, 144 P.3d 1239 (Wyo. 2006).
- ² Johnson v. Northpointe Apartments, 744 So. 2d 899 (Ala. 1999); Kitchen v. Wachovia Bank & Trust Co., N.A., 44 N.C. App. 332, 260 S.E.2d 772 (1979).
- ³ International News Service v. Associated Press, 248 U.S. 215, 39 S. Ct. 68, 63 L. Ed. 211, 2 A.L.R. 293 (1918); Rodgers v. Crum, 168 Kan. 668, 215 P.2d 190 (1950).
- ⁴ Seven Lakes Development Co., L.L.C. v. Maxson, 2006 WY 136, 144 P.3d 1239 (Wyo. 2006).
- ⁵ State v. Stinstrom, 261 Or. App. 186, 322 P.3d 1076 (2014).
- ⁶ Universal Minerals, Inc. v. C. A. Hughes & Co., 669 F.2d 98 (3d Cir. 1981) (an issue of abandonment of personal property usually presents mixed questions of law and fact, which must be pleaded and proved as such); Katsaris v. U.S., 684 F.2d 758 (11th Cir. 1982) (no abandonment where criminal suspect disclaimed ownership of money, for facts and circumstances clearly established that his sole purpose was to separate himself from incriminating evidence); Goins v. U.S., 475 A.2d 362 (D.C. 1984); Gray v. Salt Lake City, 44 Utah 204, 138 P. 1177 (1914).
- ⁷ Rice Researchers, Inc. v. Hiter, 512 So. 2d 1259 (Miss. 1987); Herron v. Whiteside, 782 S.W.2d 414 (Mo. Ct. App. W.D. 1989).
- ⁸ Benjamin v. Lindner Aviation, Inc., 534 N.W.2d 400 (Iowa 1995).
- ⁹ Hendle v. Stevens, 224 Ill. App. 3d 1046, 166 Ill. Dec. 868, 586 N.E.2d 826 (2d Dist. 1992) (question of abandoned or lost).
- ¹⁰ Schley v. Couch, 155 Tex. 195, 284 S.W.2d 333 (1955).
- ¹¹ McDonald v. Railway Exp. Agency, 89 Ga. App. 884, 81 S.E.2d 525 (1954).

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IV. Proof; Presumptions

§ 56. Presumptions and burden of proof

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As a general rule, abandonment of, or an intention to abandon, property is not presumed¹ but must be proven.² This is especially true if the conduct of the owner can be explained consistently with a continued claim.³ Rather, there is a presumption that one does not intend to abandon property of value⁴ though this presumption is ordinarily not attendant where the article claimed to have been abandoned is generally considered valueless.⁵

Observation:

In admiralty law, when a previous owner claims long lost property that was involuntarily taken from his or her control, the law is hesitant to find an abandonment.⁶ An inference of abandonment is permitted but only when no owner appears.⁷

An abandonment must be made to appear affirmatively by the party asserting it and relying thereon,⁸ and the burden is upon one who alleges abandonment to prove it⁹ by clear, unequivocal, and decisive evidence.¹⁰ A finding of abandonment is not predicated on any single factor but on all of the facts and circumstances.¹¹

Observation:

Abandonment under the law of finds must be shown by clear and convincing evidence,¹² but it may, and often must, be determined on the basis of circumstantial evidence.¹³

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Footnotes

- ¹ Johnson-Schmitt v. Robinson, 990 F. Supp. 2d 331 (W.D. N.Y. 2013) (applying New York law); Bruner v. Geneva County Forestry Dept., 865 So. 2d 1167 (Ala. 2003); Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012); Herron v. Barnard, 390 S.W.3d 901 (Mo. Ct. App. W.D. 2013).
- ² Grande v. Jennings, 229 Ariz. 584, 278 P.3d 1287 (Ct. App. Div. 1 2012).
As to proving intent to abandon by inference, see § 58.
- ³ Linscomb v. Goodyear Tire & Rubber Co., 199 F.2d 431 (8th Cir. 1952); Herron v. Barnard, 390 S.W.3d 901 (Mo. Ct. App. W.D. 2013).
- ⁴ Horne v. TGM Associates, L.P., 56 So. 3d 615 (Ala. 2010).
- ⁵ Milford v. Tennessee River Pulp & Paper Co., 355 So. 2d 687 (Ala. 1978).
- ⁶ § 9.
- ⁷ Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel or Vessels, 221 F.3d 634 (4th Cir. 2000).
As to admiralty law, generally, see Am. Jur. 2d, Admiralty.[WestlawNext®(r) Search Query]
- ⁸ Hoelzer v. City of Stamford, Conn., 933 F.2d 1131 (2d Cir. 1991); Strawberry Water Co. v. Paulsen, 220 Ariz. 401, 207 P.3d 654 (Ct. App. Div. 1 2008); Herron v. Barnard, 390 S.W.3d 901 (Mo. Ct. App. W.D. 2013); State v. West, 293 N.C. 18, 235 S.E.2d 150 (1977).
- ⁹ In re Hansen, 473 B.R. 240 (Bankr. E.D. Tenn. 2012) (applying Tennessee law); Fletcher v. Stewart, 2015 Ark. App. 105, 456 S.W.3d 378 (2015); Brown v. Reynolds, 872 So. 2d 290 (Fla. 2d DCA 2004); Lewis v. Maine Coast Artists, 2001 ME 75, 770 A.2d 644 (Me. 2001); City of St. Peters v. Hill, 9 S.W.3d 652, 109 A.L.R.5th 799 (Mo. Ct. App. E.D. 1999).
- ¹⁰ In re Hansen, 473 B.R. 240 (Bankr. E.D. Tenn. 2012) (applying Tennessee law); Strawberry Water Co. v. Paulsen, 220 Ariz. 401, 207 P.3d 654 (Ct. App. Div. 1 2008); Fletcher v. Stewart, 2015 Ark. App. 105, 456 S.W.3d 378 (2015) (real property); Kearns v. McNeill Bros. Moving and Storage Co., Inc., 509 A.2d 1132, 1 U.C.C. Rep. Serv. 2d 856 (D.C. 1986); Weaver v. Stafford, 134 Idaho 691, 8 P.3d 1234 (2000) (overruled on other grounds by, Weitz v. Green, 148 Idaho 851, 230 P.3d 743 (2010)); Herron v. Barnard, 390 S.W.3d 901 (Mo. Ct. App. W.D. 2013); Olin v. Goehler, 39 Wash. App. 688, 694 P.2d 1129 (Div. 2 1985); Nelson v. Pacific County, 36 Wash. App. 17, 671 P.2d 785 (Div. 2 1983).
The intent to abandon property must be shown by unequivocal and decisive acts indicative of abandonment. In re Panel Town of Dayton, Inc., 338 B.R. 764 (Bankr. S.D. Ohio 2006) (applying Ohio law).
- ¹¹ Unit Petroleum Co. v. Veitch, 79 F. Supp. 3d 1234 (N.D. Okla. 2015); Prue v. Royer, 193 Vt. 267, 2013 VT 12, 67 A.3d 895 (2013).
- ¹² Zych v. Unidentified, Wrecked and Abandoned Vessel, Believed to be SB Lady Elgin, 755 F. Supp. 213 (N.D. Ill. 1990) (strong and convincing); Sea Hunters, LP v. Unidentified, Wrecked & Abandoned Vessel, 599 F. Supp. 2d 57 (D. Me. 2009); Smith v. The Abandoned Vessel, 610 F. Supp. 2d 739 (S.D. Tex. 2009).
- ¹³ Zych v. Unidentified, Wrecked and Abandoned Vessel, Believed to be SB Lady Elgin, 755 F. Supp. 213 (N.D. Ill. 1990).

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IV. Proof; Presumptions

§ 57. Presumptions and burden of proof—Under statute

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Statutes that provide that the State shall take protective custody of or title to unclaimed property do so by creating a statutory rebuttable presumption of abandonment after a stated period of inactivity.¹ The effect of the presumption is to shift the burden of going forward with the evidence to the party against whom the presumption operates.²

The Uniform Unclaimed Property Act creates a presumption that property is abandoned after the expiration of stated periods of time for stated classes of property;³ special presumptions apply to property in safe-deposit boxes.⁴ Additionally, a record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation.⁵

Under statutes such as the Uniform Unclaimed Property Act, abandonment is presumed after the statutorily mandated period of dormancy expires.⁶ The presumption of abandonment is statutory and, therefore, independent of common law principles of abandonment.⁷

Observation:

A statute may also contain mandatory time limits within which an action to declare property not to be lost property must be commenced.⁸ Absent the timely commencement of such an action, the property may be presumed lost if no claim is made within the statutory dormancy period.⁹

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provision creating a presumption that property is abandoned after the expiration of stated periods of time for stated classes of property is at Revised Uniform Unclaimed Property Act § 201(2016).

Under the Revised Uniform Unclaimed Property Act of 2016, the special presumptions applicable to property in safe-deposit boxes is at Revised Uniform Unclaimed Property Act § 205(2016).

[END OF SUPPLEMENT]

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Footnotes

- ¹ Anderson Nat. Bank v. Lueckett, 321 U.S. 233, 64 S. Ct. 599, 88 L. Ed. 692, 151 A.L.R. 824 (1944).
- ² State v. Northwestern Nat. Bank of Minneapolis, 219 Minn. 471, 18 N.W.2d 569 (1945).
- ³ Unif. Unclaimed Property Act § 2(a) (1995).
As to statutory classes of property as determinative of distributive rights, see § 21.
- ⁴ Unif. Unclaimed Property Act § 3 (1995).
- ⁵ § 60.
- ⁶ Canel v. Topinka, 212 Ill. 2d 311, 288 Ill. Dec. 623, 818 N.E.2d 311 (2004); Willsmore v. Ocoila Tp., 106 Mich. App. 671, 308 N.W.2d 796, 23 A.L.R.4th 1012 (1981).
- ⁷ Canel v. Topinka, 212 Ill. 2d 311, 288 Ill. Dec. 623, 818 N.E.2d 311 (2004); Presley v. City of Memphis, 769 S.W.2d 221 (Tenn. Ct. App. 1988).
As to presumptions, generally, see § 56.
- ⁸ Simmons v. Safir, 276 A.D.2d 544, 713 N.Y.S.2d 771 (2d Dep't 2000).
- ⁹ Simmons v. Safir, 276 A.D.2d 544, 713 N.Y.S.2d 771 (2d Dep't 2000).

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IV. Proof; Presumptions

§ 58. Proof of intention to abandon

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”Abandonment” of property is a technical legal concept requiring evidence of a specific intent to relinquish a known right.¹ The party seeking to declare an abandonment must prove that the abandoning party intended to do so² as determined upon all the facts and circumstances.³

The positive testimony of the owner in affirmation of the fact is not required.⁴ If there is no expressed intent, the intent may be inferred from the acts of the owner⁵ when the facts justify it.⁶ Intention to abandon property may be shown by the declarations, acts, or conduct of the party who it is claimed abandoned it⁷ provided the conduct is clearly inconsistent with any intention to retain and continue the use or ownership of the property.⁸ Indeed, the evidence of the intent to abandon property must reasonably beget the exclusive inference of throwing away.⁹

Observation:

Although the failure to pay taxes does not of itself warrant an inference of abandonment of property,¹⁰ the failure to pay taxes may be sufficient to show an intention to abandon when connected with other circumstances.¹¹

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Footnotes

- ¹ City of Houston v. Van De Mark, 83 S.W.3d 864 (Tex. App. Texarkana 2002).
- ² Michael v. First Chicago Corp., 139 Ill. App. 3d 374, 93 Ill. Dec. 736, 487 N.E.2d 403 (2d Dist. 1985).
The intent to abandon property must be shown by unequivocal and decisive acts indicative of abandonment. *In re Panel Town of Dayton, Inc.*, 338 B.R. 764 (Bankr. S.D. Ohio 2006) (applying Ohio law).
- ³ UMG Recordings, Inc. v. Augusto, 558 F. Supp. 2d 1055 (C.D. Cal. 2008), judgment aff'd, 628 F.3d 1175 (9th Cir. 2011) (applying California law); Keilholtz v. State, 261 Ga. App. 1, 581 S.E.2d 660 (2003).
- ⁴ Erickson v. Sinykin, 223 Minn. 232, 26 N.W.2d 172, 170 A.L.R. 697 (1947).
- ⁵ Riverside Drainage Dist. of Sedgwick County v. Hunt, 33 Kan. App. 2d 225, 99 P.3d 1135 (2004); State v. Branam, 2006 MT 300, 334 Mont. 457, 148 P.3d 635 (2006).
A finding of abandonment must be based upon evidence from which an inference of abandonment can reasonably be drawn. *Spinks v. Equity Residential Briarwood Apartments*, 171 Cal. App. 4th 1004, 90 Cal. Rptr. 3d 453 (6th Dist. 2009).
Intent may be inferred from words spoken, acts done, and other objective facts. *Keilholtz v. State*, 261 Ga. App. 1, 581 S.E.2d 660 (2003).
- ⁶ Kelley v. Nationwide Auto Restoration, LLC, 246 S.W.3d 470 (Ky. Ct. App. 2007).
- ⁷ Universal Minerals, Inc. v. C. A. Hughes & Co., 669 F.2d 98 (3d Cir. 1981) (finding an intent to abandon the refuse from coal mining); Cameron v. Lebow, 338 S.W.2d 399 (Ky. 1960); Erickson v. Sinykin, 223 Minn. 232, 26 N.W.2d 172, 170 A.L.R. 697 (1947); Hilyard v. Engel, 123 Mont. 20, 209 P.2d 895 (1949).
- ⁸ Riverside Drainage Dist. of Sedgwick County v. Hunt, 33 Kan. App. 2d 225, 99 P.3d 1135 (2004); City of St. Peters v. Hill, 9 S.W.3d 652, 109 A.L.R.5th 799 (Mo. Ct. App. E.D. 1999); State v. Belcher, 306 Or. 343, 759 P.2d 1096 (1988).
A finding of abandonment must be based upon evidence from which an inference of abandonment can reasonably be drawn. *Spinks v. Equity Residential Briarwood Apartments*, 171 Cal. App. 4th 1004, 90 Cal. Rptr. 3d 453 (6th Dist. 2009).
- ⁹ Johnson-Schmitt v. Robinson, 990 F. Supp. 2d 331 (W.D. N.Y. 2013) (applying New York law); *In re Panel Town of Dayton, Inc.*, 338 B.R. 764 (Bankr. S.D. Ohio 2006) (applying Ohio law).
- ¹⁰ Fastenau v. Engel, 125 Colo. 119, 240 P.2d 1173 (1952); Alexander v. Grove Stone & Sand Co., 237 N.C. 251, 74 S.E.2d 538 (1953); O'Dwyer v. Ream, 390 Pa. 474, 136 A.2d 90 (1957).
- ¹¹ Mulvihill v. Finseth, 396 N.W.2d 889 (Minn. Ct. App. 1986) (indicative factors of abandonment include failure to make payments for long period of time, failure to pay taxes, failure to retain possession, and failure to assert rights to property); Hilyard v. Engel, 123 Mont. 20, 209 P.2d 895 (1949).

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IV. Proof; Presumptions

§ 59. Lapse of time; nonuse

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Mere nonuse¹ or lapse of time² does not, in itself, constitute abandonment. However, nonuse and lapse of time are competent evidence of an intent to abandon and as such may be entitled to great weight when considered with other circumstances,³ such as the failure to conduct sufficient efforts to recover the property.⁴

Under the law of finds, the inference of abandonment may arise from lapse of time and nonuse of the property.⁵ The question of an abandonment of an oil and gas lease is generally one of fact and may be shown by a cessation of operations for an unreasonable length of time.⁶ Lapse of time, alone, does not necessarily establish abandonment within the meaning of the Abandoned Shipwreck Act (ASA).⁷ Thus, an owner's failure to return to a shipwreck site does not necessarily prove abandonment.⁸

Observation:

Slight circumstances have been allowed to rebut the inference of abandonment arising from long disuse.⁹

Footnotes

- ¹ [Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs](#), 2015 WL 1471267 (M.D. Ga. 2015) (stating maritime rule); [R.F. Daddario & Sons, Inc. v. Shelansky](#), 123 Conn. App. 725, 3 A.3d 957 (2010); [Allamakee County v. Collins Trust](#), 599 N.W.2d 448 (Iowa 1999); [Riverside Drainage Dist. of Sedgwick County v. Hunt](#), 33 Kan. App. 2d 225, 99 P.3d 1135 (2004); [Rinehart v. Schubel](#), 2002 ME 53, 794 A.2d 73 (Me. 2002); [King v. Bankerd](#), 55 Md. App. 619, 465 A.2d 1181 (1983), judgment aff'd, 303 Md. 98, 492 A.2d 608 (1985); [Sparling Plastic Industries, Inc. v. Sparling](#), 229 Mich. App. 704, 583 N.W.2d 232 (1998); [Herron v. Barnard](#), 390 S.W.3d 901 (Mo. Ct. App. W.D. 2013); [Rieman v. Anderson](#), 282 Mont. 139, 935 P.2d 1122 (1997); [Long v. Noah's Lost Ark, Inc.](#), 158 Ohio App. 3d 206, 2004-Ohio-4155, 814 N.E.2d 555 (7th Dist. Mahoning County 2004); [Quarry Office Park Associates v. Philadelphia Elec. Co.](#), 394 Pa. Super. 426, 576 A.2d 358 (1990); [City of Houston v. Van De Mark](#), 83 S.W.3d 864 (Tex. App. Texarkana 2002).
- ² [Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs](#), 2015 WL 1471267 (M.D. Ga. 2015) (stating maritime rule); [R.F. Daddario & Sons, Inc. v. Shelansky](#), 123 Conn. App. 725, 3 A.3d 957 (2010); [Herron v. Barnard](#), 390 S.W.3d 901 (Mo. Ct. App. W.D. 2013).
- ³ [R.F. Daddario & Sons, Inc. v. Shelansky](#), 123 Conn. App. 725, 3 A.3d 957 (2010).
The lapse of a long period of time following relinquishment of possession constitutes significant evidence of the intention to abandon property. [Kelley v. Nationwide Auto Restoration, LLC](#), 246 S.W.3d 470 (Ky. Ct. App. 2007).
The amount of time that has passed between the relinquishment and the subsequent discovery of the property by a third party is informative on the topic of abandonment but not dispositive. [Tait v. U.S.](#), 763 F. Supp. 2d 786 (E.D. Va. 2011).
As to proof of an intent to abandon, generally, see § 58.
- ⁴ [Zych v. Unidentified, Wrecked and Abandoned Vessel, Believed to be SB Lady Elgin](#), 755 F. Supp. 213 (N.D. Ill. 1990); [City of Houston v. Van De Mark](#), 83 S.W.3d 864 (Tex. App. Texarkana 2002).
- ⁵ [Chance v. Certain Artifacts Found and Salvaged from The Nashville](#), 606 F. Supp. 801 (S.D. Ga. 1984), judgment aff'd, 775 F.2d 302 (11th Cir. 1985).
As to shipwreck finds, see Am. Jur. 2d, Salvage. [WestlawNext® Search Query]
- ⁶ [Shannon v. Stookey](#), 59 Ill. App. 3d 573, 16 Ill. Dec. 774, 375 N.E.2d 881 (5th Dist. 1978).
- ⁷ [Fairport Intern. Exploration, Inc. v. Shipwrecked Vessel, Captain Lawrence](#), 177 F.3d 491, 1999 FED App. 0171P (6th Cir. 1999).
- ⁸ [Fairport Intern. Exploration, Inc. v. Shipwrecked Vessel, Captain Lawrence](#), 177 F.3d 491, 1999 FED App. 0171P (6th Cir. 1999).
As to proof of abandonment, see § 55.
- ⁹ [Gilbert v. Campise](#), 432 So. 2d 423 (La. Ct. App. 5th Cir. 1983) (no abandonment was found where tenants previously evicted from their apartment failed to object to seizure and sequestration of their furnishings for a period extending for over six years as there was no requirement that they so object).

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IV. Proof; Presumptions

§ 60. Weight and sufficiency of evidence; prima facie evidence under statute

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In order to establish an abandonment of property, it is not enough that the owner's acts give reasonable cause to others to believe that the property has been abandoned.¹ Thus, for example, evidence that landowners did not use the property, refused to pay taxes, offered to sell, and mailed a notice of abandonment to all interested parties did not establish that the landowners abandoned their property.² However, evidence supports a finding that an owner abandoned its interest in a restaurant where the owner filed a withdrawal notice of its assumed name in which the owner asserted that he was no longer connected with the restaurant and told the county clerk that he was abandoning the restaurant.³

Observation:

Under the Uniform Unclaimed Property Act, a record of the issuance of a check, draft, or similar instrument is prima facie

evidence of an obligation.⁴ In claiming property from a holder who is also the issuer, the administrator's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment.⁵

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding evidence of an unpaid debt or undischarged obligation are at Revised [Uniform Unclaimed Property Act § 1005\(2016\)](#). Revised [Uniform Unclaimed Property Act § 1005\(a\)\(2016\)](#) provides that a record of a putative holder showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation. Revised [Uniform Unclaimed Property Act § 1005\(b\)\(2016\)](#) allows a putative holder to establish by a preponderance of the evidence that there is no unpaid debt or undischarged obligation or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the putative holder. Revised [Uniform Unclaimed Property Act § 1005\(00c\)](#) addresses overcoming the prima facie evidence.

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Riverside Drainage Dist. of Sedgwick County v. Hunt, 33 Kan. App. 2d 225, 99 P.3d 1135 \(2004\).](#)
- ² [Pocono Springs Civic Ass'n, Inc. v. MacKenzie, 446 Pa. Super. 445, 667 A.2d 233 \(1995\).](#)
- ³ [McIntyre v. Maglaris, 2004 WL 1201625 \(Tex. App. Dallas 2004\).](#)
- ⁴ [Unif. Unclaimed Property Act § 6 \(1995\).](#)
- ⁵ [Unif. Unclaimed Property Act § 6 \(1995\).](#)

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The defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.¹ With regard to property held by the State,² the Uniform Unclaimed Property Act provides a 10-year limitation period for enforcement actions by the State and tolls the period during such times as mandated reports or claims are not filed.³

Observation:

A property owner's insanity in believing that she could protect her family if she left cash on the doorstep of a person believed to be aiming a satellite at her home did not toll the six-month period of the abandoned property statute which deems the finder of tangible personal property to be the sole owner if the property is unclaimed for six months.⁴

CUMULATIVE SUPPLEMENT

Statutes:

Under the Revised Uniform Unclaimed Property Act of 2016, the provisions regarding periods of limitation and repose are at Revised Uniform Unclaimed Property Act § 610(2016) and are consistent with the provisions of the 1995 Act.

[END OF SUPPLEMENT]

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Footnotes

¹ [Unif. Unclaimed Property Act § 6 \(1995\)](#).

² [§§ 43 to 54](#).

³ [Unif. Unclaimed Property Act § 19\(b\) \(1995\)](#).

⁴ [Ho v. Rubin, 333 N.J. Super. 599, 756 A.2d 643 \(Ch. Div. 1999\)](#), [aff'd, 333 N.J. Super. 580, 756 A.2d 633 \(App. Div. 2000\)](#).

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1 Am. Jur. 2d Abatement, Survival, and Revival Summary

American Jurisprudence, Second Edition | May 2021 Update

Abatement, Survival, and Revival

John Bourdeau, J.D.

[Correlation Table](#)

Summary

Scope:

This topic covers the abatement of an action because of the pendency of another action based on the same cause, abatement because of death or other change in the status of a party, the effect of a supervening death on a pending action and survival of the cause of action, and the revival and continuance of a pending action by or against a substituted party.

Federal Aspects:

Actions brought in federal court may be subject to the Federal Rules of Civil Procedure.

Treated Elsewhere:

Alcohol, survival of actions under civil damage or dram shop acts, see [Am. Jur. 2d, Intoxicating Liquors § 504](#)

Antitrust actions, survival of, following death of party, see [Am. Jur. 2d, Monopolies and Restraints of Trade §§ 313, 372](#)

Assignments, generally, see [Am. Jur. 2d, Assignments §§ 1 et seq.](#)

Civil rights, survival of actions under federal law, see [Am. Jur. 2d, Civil Rights § 132](#)

Common-law offense, survival of, as affected by legislation, see [Am. Jur. 2d, Criminal Law §§ 7, 8](#)

Corporations, survival and assignability of causes of action against directors of, for payment of dividends, see [Am. Jur. 2d, Corporations § 1128](#)

Creditor's bill: abatement or survival of, see [Am. Jur. 2d, Creditors' Bills § 58](#); lien judgment creditor obtains upon filing creditor's bill as surviving death of debtor, see [Am. Jur. 2d, Creditors' Bills § 81](#)

Divorce proceedings, abatement, survival, and revival of, see [Am. Jur. 2d, Divorce and Separation §§ 118, 119](#)

Election contest case, abatement of, upon death of contestant, see [Am. Jur. 2d, Elections § 406](#)

Equity actions, abatement and revival rules as applicable in, see [Am. Jur. 2d, Equity § 178](#)

Federal Employers' Liability Act, survival of cause of action under, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts § 51](#)

Forfeiture, survivorship of action for, see [Am. Jur. 2d, Forfeitures and Penalties § 22](#)

Indians, actions or proceedings pending before court or agency of United States prior to cession of civil jurisdiction over causes of action between Indians or to which Indians are parties by United States to state as not abating by reason of the cession, see [Am. Jur. 2d, Indians; Native Americans § 133](#)

Infant, effect of reaching majority during pendency of action brought by guardian, see [Am. Jur. 2d, Infants § 141](#)

Insurer, survivability of action against, for wrongful refusal to settle claim, see [Am. Jur. 2d, Insurance § 1400](#)

Judgment, revival or renewal of, see [Am. Jur. 2d, Judgments §§ 391 to 419](#)

Jury trial, revival of right to, after waiver of, see [Am. Jur. 2d, Jury § 77](#)

Lease extension, revival of waived conditions or breach of conditions for, see [Am. Jur. 2d, Landlord and Tenant § 170](#)

Lis pendens doctrine: generally, see [Am. Jur. 2d, Lis Pendens §§ 1 et seq.](#); cancellation of lis pendens notice where underlying action has abated, see [Am. Jur. 2d, Lis Pendens § 62](#)

Longshore and Harbor Workers' Compensation Act, abatement of awards under, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts § 111](#)

Lost or destroyed instruments, pleas in abatement as defense in action to restore, see [Am. Jur. 2d, Lost and Destroyed Instruments § 10](#)

Mandamus actions, abatement, survival, and revival as applicable to, see [Am. Jur. 2d, Mandamus § 378](#)

Part payment on account as reviving time-barred debt, see [Am. Jur. 2d, Accounts and Accounting § 25](#)

Pleas in abatement, generally, see [Am. Jur. 2d, Pleading §§ 237 to 251](#); in equity, see [Am. Jur. 2d, Equity § 188](#)

Reviewability of order granting or denying revival while main case was still pending before trial court, see [Am. Jur. 2d, Appellate Review § 150](#)

Securities regulation laws, survivability of action arising under, see [Am. Jur. 2d, Securities Regulation—State § 194](#)

Statute of limitations, revival of cause of action barred by, see [Am. Jur. 2d, Limitation of Actions § 40](#)

Substitution of parties, generally, see [Am. Jur. 2d, Parties §§ 298 to 337](#)

Surety, effect of death of principal on liability of, see [Am. Jur. 2d, Suretyship § 68](#)

Will, right to contest, survival, abatement and revival of, see [Am. Jur. 2d, Wills §§ 786 to 789](#)

Workers' compensation, benefits, transfer and survival of rights as to, see [Am. Jur. 2d, Workers' Compensation §§ 630 to 635](#)

Writ of execution, issuance as affected by death of judgment creditor, and necessity of revival proceedings for issuance thereof, see [Am. Jur. 2d, Executions and Enforcement of Judgments § 52](#)

Written contractual agreement, effect of oral agreement for revival of expired, see [Am. Jur. 2d, Statute of Frauds § 6](#)

Wrongful death actions, generally, see [Am. Jur. 2d, Wrongful Death §§ 1 et seq.](#)

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I. Abatement

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

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A.L.R. Index, Abatement, Survival, and Revival of Actions

West's A.L.R. Digest, [Abatement and Revival](#) 🔑 1 to 4

West's A.L.R. Digest, [Action](#) 🔑 68 to 69(7)

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1 Am. Jur. 2d Abatement, Survival, and Revival § 1

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Abatement, Survival, and Revival

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I. Abatement

A. In General

§ 1. Definition of abatement and basic concepts

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West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  1 to 4

Forms

Forms for pleading nonjoinder as grounds for abatement, see Am. Jur. Pleading and Practice Forms, Abatement, Revival, and Stay [[WestlawNext® Search Query](#)]

At common law, an abatement is an overthrow of a suit, the equivalent of a dismissal, resulting from the fact that the defendant pleads some matter that defeats the action, either for the time being or permanently.¹ Abatement may also mean the complete extinguishment of a cause of action.² Thus, an action which has been abated is dead, and any further enforcement of the cause of action requires the bringing of a new action provided that a cause of action remains.³

”Abatement” is also defined as the suspension or defeat of an action for a reason unrelated to the merits of the claim.⁴ It is a present suspension of all proceedings in a suit, which prohibits the court and the parties from proceeding in any manner until the case has been ordered reinstated.⁵

Some courts treat abatement as a request for a stay of proceedings, forgoing the risk to the parties inherent in an outright dismissal.⁶ Other courts have declared that an abatement is utilized to terminate one of two actions pending simultaneously which involve the same parties and the same issues; a “stay,” by contrast, essentially postpones one proceeding until a contingency occurs.⁷

In equity, abatement signifies a present, temporary suspension of further proceedings in a suit because of want of proper parties.⁸ It is an interruption or suspension of a suit, the equivalent of a stay of proceedings,⁹ and the suit may be revived and proceed to its regular determination.¹⁰

§ 1. Definition of abatement and basic concepts, 1 Am. Jur. 2d Abatement, Survival,...

An action may be abated based on the jurisdiction of the court,¹¹ the joinder of parties under pretense,¹² the nonjoinder of required parties,¹³ and the premature commencement of an action.¹⁴

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Footnotes

- ¹ [Baer v. Fahnestock & Co.](#), 565 F.2d 261 (3d Cir. 1977).
- ² [State ex rel. J.E. Dunn, Jr. & Associates, Inc. v. Schoenlaub](#), 668 S.W.2d 72 (Mo. 1984).
- ³ [Onewest Bank, F.S.B. v. Drayton](#), 29 Misc. 3d 1021, 910 N.Y.S.2d 857 (Sup 2010).
- ⁴ [Edwards v. Wal-Mart](#), 930 So. 2d 1273 (Miss. Ct. App. 2006).
As to the distinction between defenses in abatement and on the merits, see § 2.
- ⁵ [Messmer v. State Farm County Mut. Ins. Co. of Texas](#), 972 S.W.2d 774 (Tex. App. Corpus Christi 1998).
- ⁶ [Baer v. Fahnestock & Co.](#), 565 F.2d 261 (3d Cir. 1977).
- ⁷ [Flaig ex rel. Palmcrest Homes of Tampa Bay, LLC v. Sullivan](#), 141 So. 3d 1274 (Fla. 2d DCA 2014); [Century Sur. Co. v. de Moraes](#), 998 So. 2d 662 (Fla. 4th DCA 2009).
As to the distinction between an abatement and a stay, generally, see § 3.
- ⁸ [Fiegenbaum v. McFarlane](#), 399 Ill. 367, 77 N.E.2d 816 (1948); [In re Samson's Estate](#), 142 Neb. 556, 7 N.W.2d 60, 144 A.L.R. 264 (1942).
- ⁹ [Baer v. Fahnestock & Co.](#), 565 F.2d 261 (3d Cir. 1977).
As to the abatement of equitable causes of action, see § 60.
As to the distinction sometimes made between abatement and stay, see § 3.
- ¹⁰ As to revival of actions, generally, see §§ 92 to 109.
- ¹¹ [Celadon Trucking Services, Inc. v. Martinez](#), 320 S.W.3d 377 (Tex. App. El Paso 2010) (the court may abate proceedings to allow a reasonable opportunity for the jurisdictional problem to be cured); [Foster v. Teacher Retirement System](#), 273 S.W.3d 883 (Tex. App. Austin 2008).
- ¹² [Rakestraw v. Norris](#), 478 S.W.2d 409 (Mo. Ct. App. 1972).
- ¹³ [Ellison v. Mitchell](#), 26 Pa. D. & C.2d 45, 1962 WL 6656 (C.P. 1962).
- ¹⁴ [Gianassi v. State Farm Mut. Auto. Ins. Co.](#), 60 F. Supp. 3d 1267 (M.D. Fla. 2014) (abatement offered at least the possibility of increased judicial efficiency for those faith claims that would become ripe); [State ex rel. Tal v. Norick](#), 1999 OK 85, 991 P.2d 999 (Okla. 1999).
As to abatement due to premature commencement of an action, generally, see § 4.

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1 Am. Jur. 2d Abatement, Survival, and Revival § 2

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I. Abatement

A. In General

§ 2. Distinction between defenses in abatement and on merits

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West's Key Number Digest, [Judgment](#)  540

The fundamental distinction between defenses in abatement and those on the merits is generally that a decision abating a pending action does not bar a future action on the same cause¹ while a judgment on the merits concludes the action.²

A defense in abatement is dilatory in nature and is intended to defeat the particular action because that action has been improperly brought in some respect that does not go to the merits of the cause of action.³ Allowance of this defense amounts to a dismissal without prejudice of the abated action.⁴

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Footnotes

¹ [Bowles v. Wilke](#), 175 F.2d 35 (7th Cir. 1949).

² [Terry ex rel. Christian Book Center, Inc. v. Taylor](#), 293 Ark. 237, 737 S.W.2d 437 (1987).
An example of a plea “in bar,” as opposed to “in abatement,” arose when, in a personal injury action against a city, the city’s plea sought a ruling: (1) that the plaintiffs did not allege compliance with a requirement for a notice of claim; (2) that they are unable ever to prove such compliance; and (3) that they could never recover; regardless of the label placed on the plea by the pleader, this was a plea in bar rather than in abatement. [Smith v. City of Dallas](#), 404 S.W.2d 839 (Tex. Civ. App. Dallas 1966).
As to pleas in bar, generally, see Am. Jur. 2d, Pleading[[WestlawNext®\(r\) Search Query](#)].

³ [Stephens v. Monongahela Nat Bank of Brownsville, Pa](#), 111 U.S. 197, 4 S. Ct. 336, 28 L. Ed. 399 (1884).
As to pleading matters in abatement and other dilatory pleas, see Am. Jur. 2d, Pleading[[WestlawNext®\(r\) Search Query](#)].

⁴ [Moresca v. Allstate Ins. Co.](#), 231 So. 2d 283 (Fla. 4th DCA 1970).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 3

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I. Abatement

A. In General

§ 3. Distinction between abatement and stay

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West's Key Number Digest

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[Stay of civil proceedings pending determination of action in federal court in same state, 56 A.L.R.2d 335](#)

[Stay of civil proceedings pending determination of action in another state or country, 19 A.L.R.2d 301](#)

[Stay of action in federal court until determination of similar action pending in state court, 5 A.L.R. Fed. 10](#)

Although the term “abatement” is sometimes used loosely as a substitute for “stay of proceedings,”¹ the two may be distinguished on several grounds. For example, when grounds for the abatement of an action exist, the abatement of the action is a matter of right,² but a stay is granted in the court’s discretion.³ Furthermore, while an abatement requires the complete identity of parties and causes of action, a “stay” only requires a substantial similarity of parties and actions.⁴ Where a question of abatement or stay arises in a court during determination of a pending action in another jurisdiction, a stay merely results in the temporary cessation of the proceedings awaiting the outcome of the litigation in the other jurisdiction while an abatement generally constitutes a complete dismissal or discontinuance of the action.⁵ The court may, in a proper case, stay the proceedings until the termination of the suit having priority, and when the cause for abatement is removed, the court may revive the suit if anything is left to be litigated.⁶ In addition, where a proceeding has been stayed pending resolution of a pending action in another jurisdiction, it may be resumed if the other matter is not diligently consummated to judgment in the other forum; then, the judgment may be pleaded as res judicata in the stayed proceeding. Where the proceeding has abated and the pending action in the foreign jurisdiction has not been prosecuted to culmination, an entirely new action must be instituted to bring the cause before the domestic forum.⁷

Observation:

For purposes of motions to dismiss state actions also filed in federal court, a “stay” is not an “abatement.”⁸

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Footnotes

- ¹ [Kinder Mobile Home Sales, Inc. v. Clemens](#), 794 So. 2d 677 (Fla. 5th DCA 2001) (motion to dismiss treated as motion to “stay or abate” proceeding, where movant alleged claim subject to arbitration); [Axe v. Wilson](#), 150 Kan. 794, 96 P.2d 880 (1939) (“abatement” is sometimes used by court where proceedings in one action are merely deferred until trial of another action based on same cause is concluded).
As to stay of action, generally, see Am. Jur. 2d, Pleading[[WestlawNext® Search Query](#)].
- ² [People ex rel. Garamendi v. American Autoplan, Inc.](#), 20 Cal. App. 4th 760, 25 Cal. Rptr. 2d 192 (2d Dist. 1993).
- ³ [Clinton v. Jones](#), 520 U.S. 681, 117 S. Ct. 1636, 137 L. Ed. 2d 945 (1997); [Wilton v. Seven Falls Co.](#), 515 U.S. 277, 115 S. Ct. 2137, 132 L. Ed. 2d 214 (1995); [Logan v. Winstead](#), 23 S.W.3d 297 (Tenn. 2000).
- ⁴ [Homeowners Property & Cas. Ins. Co., Inc. v. Hurchalla](#), 171 So. 3d 230 (Fla. 4th DCA 2015).
- ⁵ [Pappas v. Maxwell](#), 337 Mass. 552, 150 N.E.2d 521 (1958).
As to the disposition of an abated action, generally, see § 49.
- ⁶ [Pappas v. Maxwell](#), 337 Mass. 552, 150 N.E.2d 521 (1958).
- ⁷ [Simmons v. Superior Court in and for Los Angeles County](#), 96 Cal. App. 2d 119, 214 P.2d 844, 19 A.L.R.2d 288 (2d Dist. 1950).
- ⁸ [Ex parte J.E. Estes Wood Co., Inc.](#), 42 So. 3d 104 (Ala. 2010).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 4

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I. Abatement

B. Particular Grounds for Abatement

1. In General; Premature Commencement of Action

§ 4. Premature commencement of action, generally

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West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  20

Forms

Motions or pleas in abatement—Premature commencement of action: see Am. Jur. Pleading and Practice Forms, Abatement, Revival, and Stay [\[WestlawNext®\(r\) Search Query\]](#)

Claim for injury—Not filed with municipality or political subdivision, see: Am. Jur. Pleading and Practice Forms, Abatement, Revival, and Stay [\[WestlawNext®\(r\) Search Query\]](#)

An action cannot be maintained if it is commenced before the accrual of the cause of action on which it is based.¹ Such premature commencement is a ground for the abatement of the action.² The defense of premature suit must be specially pleaded by a defendant to be available where the petition shows no premature filing on its face.³ The defense of prematurity is waived where it is not raised in the answer.⁴

A trial court may sever and abate claims to make sure they have merit before ruling on the question of class certification; because resolution of the threshold issue could defeat the rights of the plaintiffs to bring the lawsuit, the interest of sound judicial economy dictates that the resolution be reached before the effort and expense of class certification and notification are undertaken.⁵

Litigation is premature, and curable by abatement, where the plaintiff's complaint is dismissed for failing to fulfill statutory administrative prerequisites prior to filing a legal action.⁶ Thus, a prisoner's failure to exhaust administrative remedies prior to bringing a § 1983⁷ action is a matter in abatement.⁸ Furthermore, where a party is necessary and the judgment will be of no effect if substituted parties are named, the action abates⁹ and cannot be revived.¹⁰

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Footnotes

- ¹ See Am. Jur. 2d, Pleading[WestlawNext®(r) Search Query].
- ² [Progressive Exp. Ins. Co., Inc. v. Menendez](#), 979 So. 2d 324 (Fla. 3d DCA 2008), decision quashed on other grounds, 35 So. 3d 873 (Fla. 2010); [Wright v. Life Ins. Co. of Georgia](#), 762 So. 2d 992 (Fla. 4th DCA 2000).
- ³ [Meadows v. Metropolitan Life Ins. Co.](#), 104 S.W.2d 788 (Mo. Ct. App. 1937).
- ⁴ [Green v. Sherritt](#), 17 Cal. App. 2d 732, 62 P.2d 769 (1st Dist. 1936).
- ⁵ [Domizio v. Progressive County Mut. Ins. Co.](#), 54 S.W.3d 867 (Tex. App. Austin 2001).
- ⁶ [Progressive Exp. Ins. Co., Inc. v. Menendez](#), 979 So. 2d 324 (Fla. 3d DCA 2008), decision quashed on other grounds, 35 So. 3d 873 (Fla. 2010).
- ⁷ 42 U.S.C.A. § 1983.
- ⁸ [Cockcroft v. Kirkland](#), 548 F. Supp. 2d 767 (N.D. Cal. 2008).
- ⁹ [Dibble v. Meyer](#), 203 Or. 541, 278 P.2d 901 (1955).
- ¹⁰ § 92.

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I. Abatement

B. Particular Grounds for Abatement

1. In General; Premature Commencement of Action

§ 5. Public official's resignation or otherwise ceasing to hold office

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West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  45, 65

An action against a person acting in an official capacity as a representative of the government is personal in nature and generally does not abate upon his or her resignation¹ or upon his or her death.² In this regard, under the Federal Rules of Civil Procedure, when a public officer is a party to an action in his or her official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party.³

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Footnotes

¹ [Independent Fish Co. v. Phinney](#), 252 F. Supp. 952 (W.D. Tex. 1966).

² [§ 46](#).

³ [Fed. R. Civ. P. 25\(d\)](#).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 6

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I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

a. Fundamental Principles

§ 6. Fundamental principles of abatement where another action is pending, generally

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West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  4 to 17

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[Stay of civil proceedings pending determination of action in federal court in same state](#), 56 A.L.R.2d 335

[Stay of civil proceedings pending determination of action in another state or country](#), 19 A.L.R.2d 301

[Stay of action in federal court until determination of similar action pending in state court](#), 5 A.L.R. Fed. 10

Where a claim involves the same subject matter and parties as a previously filed action, so that the same facts and issues are presented, resolution should occur through the prior action, and a second suit should be dismissed.¹ It is fundamental that a plaintiff is not authorized simply to ignore a prior action and bring a second, independent action on the same state of facts while the original action is pending.² A second action based on the same cause is generally abated where:

- there is a prior action pending³
- in a court of competent jurisdiction⁴
- within the same state or jurisdictional territory⁵
- between the same parties⁶
- involving the same or substantially the same subject matter and cause of action⁷
- in which prior action the rights of the parties may be determined and adjudged⁸

The purpose of the defense of abatement by reason of another action pending is to protect a party from harassment by having to defend several suits on the same cause of action at the same time.⁹

The plea of another action pending is dilatory and technical in nature,¹⁰ and as such, is not favored by the courts,¹¹ especially where prejudice has not resulted.¹² A party bringing a motion in abatement has the burden of proving the facts necessary to support a judgment of dismissal,¹³ including showing that he or she is within the reason for its enforcement.¹⁴

The rule in equity on the effect of the pendency of a former action as a defense is analogous to the rule at law.¹⁵

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Footnotes

- ¹ [Planned Parenthood of Kansas v. Donnelly](#), 298 S.W.3d 8 (Mo. Ct. App. W.D. 2009); [Golden Valley Disposal, LLC v. Jenkins Diesel Power, Inc.](#), 183 S.W.3d 635 (Mo. Ct. App. S.D. 2006).
- ² [Smith v. Holmes](#), 921 So. 2d 283 (Miss. 2005).
- ³ As to when an action is deemed to be pending, see §§ 12 to 16.
- ⁴ § 17.
- ⁵ §§ 19, 20.
- ⁶ §§ 22 to 27.
- ⁷ §§ 28 to 39.
- ⁸ [Stephens v. Monongahela Nat Bank of Brownsville, Pa.](#), 111 U.S. 197, 4 S. Ct. 336, 28 L. Ed. 399 (1884); [Schoonmaker v. Lawrence Brunoli, Inc.](#), 265 Conn. 210, 828 A.2d 64 (2003); [Sauvage v. Meadowcrest Living Center, LLC](#), 28 So. 3d 589 (Miss. 2010); [Smith v. Holmes](#), 921 So. 2d 283 (Miss. 2005); [Farmers State Bank of Plymouth v. Germer](#), 231 Neb. 572, 437 N.W.2d 463 (1989).
- ⁹ [Mutual Life Ins. Co. of New York v. Brune's Assignee](#), 96 U.S. 588, 24 L. Ed. 737, 1877 WL 18502 (1877); [Shepherd v. Maritime Overseas Corp.](#), 614 So. 2d 1048 (Ala. 1993); [Swift v. Radnor Tp.](#), 983 A.2d 227 (Pa. Commw. Ct. 2009). As to pleas in abatement of criminal proceedings, see Am. Jur. 2d, Pleading[WestlawNext®(r) Search Query].
- ¹⁰ [Moresca v. Allstate Ins. Co.](#), 231 So. 2d 283 (Fla. 4th DCA 1970). As to pleading matters in abatement and other dilatory pleas, see Am. Jur. 2d, Pleading[WestlawNext®(r) Search Query].
- ¹¹ [Perry v. Jordan](#), 34 Cal. 2d 87, 207 P.2d 47 (1949); [Relinger v. Fox](#), 55 So. 3d 638 (Fla. 2d DCA 2011).
- ¹² [P. J. Panzeca, Inc. v. Board of Ed., Union Free School Dist. No. 6, Towns of Islip and Smithtown](#), 29 N.Y.2d 508, 323 N.Y.S.2d 978, 272 N.E.2d 488 (1971).
- ¹³ [Jones Motor Co. v. Anderson](#), 258 Ga. App. 161, 573 S.E.2d 429 (2002).
- ¹⁴ [Relinger v. Fox](#), 55 So. 3d 638 (Fla. 2d DCA 2011); [Meagher v. Quale](#), 77 N.W.2d 878 (N.D. 1956).
- ¹⁵ [Mutual Life Ins. Co. of New York v. Brune's Assignee](#), 96 U.S. 588, 24 L. Ed. 737, 1877 WL 18502 (1877); [Farmers Nat. Bank of Danville v. First Colored Baptist Church of Danville](#), 277 Ky. 521, 126 S.W.2d 1130 (1939).

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Abatement, Survival, and Revival

John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

a. Fundamental Principles

§ 7. Priority of pending action

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West's Key Number Digest, [Abatement and Revival](#)  6, 7

A.L.R. Library

[Circumstances under which court may abate a prior action and permit parties to proceed in subsequent action](#), 6 A.L.R.3d 468

When a plaintiff attempts to divide a primary right and enforce it in two suits,¹ and the one action is pending and another is brought between the same parties and for the same cause, it is ordinarily the second action that abates;² where the plaintiff has a complete and effective remedy by either action, the second suit is deemed to be unnecessary and vexatious.³ Where two suits based on the same cause of action are filed in the same court, it is generally held that the second suit, in point of filing, is subject to abatement.⁴ Where the actions are brought in separate courts, the court that first acquires jurisdiction generally retains it, and the later-filed action is abated by a motion filed in the latter court,⁵ whereby a party to the former action calls the second court's attention to the pendency of the prior suit.⁶ Thus, where two or more courts have concurrent jurisdiction, the one which first takes cognizance of a cause has the exclusive right to entertain and exercise such jurisdiction, to the final determination of the action and the enforcement of its judgments or decrees.⁷

Caution:

One court has held that if a defendant faces two competing class actions, the abatement statute abates the second-filed class action.

even if the second-filed class action was certified first, because certification relates back to the date that the class complaint was filed.⁸

The commencement of a subsequent suit for the same cause of action cannot generally be pleaded in abatement of the original suit.⁹ Once jurisdiction has attached in a court of competent jurisdiction, it cannot be taken away or arrested by subsequent proceedings in another court; when a suit is brought, it is segregated from the general class to which it belonged and withdrawn from the authority and jurisdiction of all other courts of coordinate power.¹⁰ However, there are exceptions to this rule.¹¹

Institution of a second action is not a ground for abating or dismissing an appeal in the prior action.¹²

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Footnotes

- ¹ South Sutter, LLC v. LJ Sutter Partners, L.P., 193 Cal. App. 4th 634, 123 Cal. Rptr. 3d 301 (3d Dist. 2011).
- ² Ex parte Citicorp Acceptance Co., Inc., 715 So. 2d 199 (Ala. 1997); Lawyers Title Ins. Corp. v. Superior Court, 151 Cal. App. 3d 455, 199 Cal. Rptr. 1 (1st Dist. 1984); Miles v. Ford Motor Co., 914 S.W.2d 135 (Tex. 1995).
- ³ California Union Ins. Co. v. Trinity River Land Co., 105 Cal. App. 3d 104, 163 Cal. Rptr. 802 (3d Dist. 1980).
As to abatement of actions commenced simultaneously, see § 9.
- ⁴ Providence & N. Y. S. S. Co. v. Hill Mfg. Co., 109 U.S. 578, 3 S. Ct. 379, 27 L. Ed. 1038 (1883); First Tennessee Bank, N.A. v. Snell, 718 So. 2d 20 (Ala. 1998); Weldon v. Hill, 678 S.W.2d 268 (Tex. App. Fort Worth 1984), writ refused n.r.e., (Mar. 6, 1985).
- ⁵ State ex rel. Palmer by Palmer v. Goeke, 8 S.W.3d 193 (Mo. Ct. App. E.D. 1999); Valdez v. Ballenger, 1978-NMSC-055, 91 N.M. 785, 581 P.2d 1280 (1978).
- ⁶ Trapnell v. Hunter, 785 S.W.2d 426 (Tex. App. Corpus Christi 1990).
- ⁷ Regions Bank v. Reed, 60 So. 3d 868 (Ala. 2010).
- ⁸ Ex parte Citicorp Acceptance Co., Inc., 715 So. 2d 199 (Ala. 1997).
- ⁹ Johnson v. Brown-Service Ins. Co., 293 Ala. 549, 307 So. 2d 518 (1974); Bruns v. Archer, 352 So. 2d 121 (Fla. 2d DCA 1977).
- ¹⁰ Ex parte Lillard, 159 Tex. 18, 314 S.W.2d 800 (1958).
- ¹¹ For particular exceptions, see §§ 8, 22.
- ¹² Argo v. Moncus, 725 So. 2d 995 (Ala. Civ. App. 1998).

1 Am. Jur. 2d Abatement, Survival, and Revival § 8

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I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

a. Fundamental Principles

§ 8. Priority of pending action—Limitations on priority rule

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[Circumstances under which court may abate a prior action and permit parties to proceed in subsequent action, 6 A.L.R.3d 468](#)

Where one action is pending and another is brought between the same parties and for the same cause, the second action ordinarily abates.¹ However, the earlier filing of an action is not necessarily the controlling factor in weighing a motion to dismiss premised on the pendency of another action.² Under some circumstances, the court may permit abatement of the first action in favor of the second.³ For example, in order for the priority rule to be fully effective, the courts must be of equal general jurisdiction.⁴ Where the second suit embraces the subject matter more fully, and is brought in good faith, rather than to vex or harass the defendant;⁵ or where abatement of the second suit would result in a possible loss of substantial rights on the part of the plaintiff;⁶ or where the earlier suit is defective,⁷ the earlier suit may be abated.

In some cases, the public interest may be an important factor in determining whether an additional pending action should be abated.⁸ Where the court of a slightly later filing provides a more suitable forum for complete and expeditious resolution of issues, that court may choose not to abate the lawsuit.⁹

In other cases, the court may require the plaintiff to elect between the two actions.¹⁰ This more liberal rule is based on the premise that an abatement should not be allowed where justice to the defendant does not reasonably require it or where to

allow it would work manifest injustice to the plaintiff¹¹ or would result in the expense and delay of beginning anew.¹²

The order of filing of two suits may be of no significance where a statute provides that a defendant may move for involuntary dismissal or other appropriate relief when there is another action pending between the same parties for the same cause, and the statute does not refer to the filing times of the complaints.¹³

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Footnotes

- ¹ § 7.
- ² *Seaboard Sur. Co. v. Gillette Co.*, 75 A.D.2d 525, 426 N.Y.S.2d 762 (1st Dep't 1980).
- ³ *Honolulu Roofing Co. v. Felix*, 49 Haw. 578, 426 P.2d 298 (1967) (where two actions are pending the first one to be instituted does not necessarily take precedence).
- ⁴ *Wheelis v. Wheelis*, 226 S.W.2d 224 (Tex. Civ. App. Fort Worth 1950).
- ⁵ *Kehr v. Kehr*, 173 Neb. 532, 114 N.W.2d 26, 6 A.L.R.3d 463 (1962).
- ⁶ *LaFrance v. LaFrance*, 127 Conn. 149, 14 A.2d 739 (1940); *Brown v. Brown*, 110 Me. 280, 86 A. 32 (1913).
- ⁷ *Moser v. John F. Buckner & Sons*, 320 S.W.2d 900 (Tex. Civ. App. Waco 1959), writ refused n.r.e.
- ⁸ *Kiehn v. Love*, 143 Ill. App. 3d 434, 97 Ill. Dec. 597, 493 N.E.2d 79, 32 Ed. Law Rep. 716 (1st Dist. 1986).
- ⁹ *Seaboard Sur. Co. v. Gillette Co.*, 75 A.D.2d 525, 426 N.Y.S.2d 762 (1st Dep't 1980).
- ¹⁰ *Solarana v. Industrial Electronics, Inc.*, 50 Haw. 22, 428 P.2d 411 (1967); *Moser v. John F. Buckner & Sons*, 320 S.W.2d 900 (Tex. Civ. App. Waco 1959), writ refused n.r.e.
- ¹¹ *Rook v. McCulloch County*, 326 S.W.2d 603 (Tex. Civ. App. Austin 1959).
- ¹² *Fontaine v. Peddle*, 144 Me. 214, 67 A.2d 539 (1949).
- ¹³ *Palatine Nat. Bank v. Guardian Tampa Ltd. Partnership*, 131 Ill. App. 3d 441, 86 Ill. Dec. 666, 475 N.E.2d 1045 (1st Dist. 1985); *W.R. Grace & Co. v. Beker Industries, Inc.*, 128 Ill. App. 3d 215, 83 Ill. Dec. 451, 470 N.E.2d 577 (1st Dist. 1984).

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I. Abatement

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§ 9. Actions commenced simultaneously

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A.L.R. Library

[Pendency of prior action for absolute or limited divorce between same spouses in same jurisdiction as precluding subsequent action of like nature, 31 A.L.R.2d 442](#)

When two actions are brought simultaneously on a single cause of action, either one may be pleaded in abatement of the other.¹ Where two actions are commenced on the same day by simultaneous service of a copy of the summons and complaint in each action, neither action has priority in time and neither may be dismissed because of the pendency of the other.²

In some jurisdictions, the time when the petition was filed and a writ issued determines the priority of the action,³ and in others, the time when service of process was made on the defendant is decisive.⁴ In still other jurisdictions, when two actions are begun simultaneously or on the same day, the pendency of one cannot be pleaded in abatement of the other regardless of whether the actions were brought in the same court;⁵ in such a situation, the plaintiff may be required to select which of the pending actions he or she will pursue,⁶ or the matter may be left to the court's discretion.⁷

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§ 9. Actions commenced simultaneously, 1 Am. Jur. 2d Abatement, Survival, and...

- ¹ Fontaine v. Peddle, 144 Me. 214, 67 A.2d 539 (1949) (both will be abated on plea seasonably filed); Stapp v. Andrews, 172 Tenn. 610, 113 S.W.2d 749 (1938).
- ² Bartoi v. Bartoi, 20 Misc. 2d 262, 190 N.Y.S.2d 257 (Sup 1959).
- ³ McAdams v. District Court of Oklahoma County, 1946 OK 186, 197 Okla. 237, 169 P.2d 1011 (1946); State ex rel. Uland v. Uland, 36 Wash. 2d 176, 216 P.2d 756 (1950).
- ⁴ Martinez v. Martinez, 153 Fla. 753, 15 So. 2d 842 (1943); White v. White, 52 Ohio L. Abs. 350, 83 N.E.2d 426 (C.P. 1948).
- ⁵ Diamond v. Berman, 60 N.Y.S.2d 339 (Sup 1945), order aff'd, 270 A.D. 841, 61 N.Y.S.2d 381 (1st Dep't 1946) (summons served on same day).
- ⁶ Moore v. Lamar, 182 Ga. App. 708, 356 S.E.2d 742 (1987) (state statute required plaintiff to select case to prosecute and provides that others must be dismissed).
- ⁷ A. E. Staley Mfg. Co. v. Swift & Co., 84 Ill. 2d 245, 50 Ill. Dec. 156, 419 N.E.2d 23 (1980) (where suits were simultaneously filed, trial court free to exercise discretion in ruling upon defendant's motion to dismiss plaintiff's suit).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 10

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I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

a. Fundamental Principles

§ 10. Estoppel to plead abatement; waiver

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Under certain circumstances, a party may be estopped from pleading the abatement of a second action.¹ The plaintiff in the first suit may be guilty of such inequitable conduct as will estop him or her from relying on that suit to abate a subsequent proceeding brought by his or her adversary.² In other words, a plaintiff who filed the first of two lawsuits with inherently interrelated subject matter may be estopped from asserting the dominant jurisdiction of the first court if it is found that he or she is guilty of inequitable conduct.³

Observation:

Whether the plaintiff who filed the first lawsuit may be estopped from asserting the dominant jurisdiction of the first court is a fact issue that must be determined by the second court in which the plea in abatement is filed.⁴ Even so, the mere fact that a second court is the first to rule on a plea in abatement does not estop the proponent of the plea from continuing to assert the dominant jurisdiction of the court where the action was first filed, nor does it vest the second court with dominant jurisdiction; rather, to acquire dominant jurisdiction, the second court must also resolve the issue of estoppel against the proponent of the plea in its ruling.⁵

For instance, a party's fraudulent conduct may necessitate estoppel from pleading abatement,⁶ such as where the party fraudulently induces the other party to postpone filing of a suit so the first party may bring suit in a different county.⁷ Where

the prior action is part of a fraudulent or collusive scheme, the pendency of that action cannot be pleaded in abatement of a later suit legitimately brought to achieve the purposes ostensibly pleaded in the first action.⁸

Failure to make a timely plea in abatement may constitute a waiver.⁹

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- ¹ 4M Linen & Uniform Supply Co., Inc. v. W.P. Ballard & Co., Inc., 793 S.W.2d 320 (Tex. App. Houston 1st Dist. 1990), writ denied, (Oct. 31, 1990).
- ² State v. T. C. Bateson Const. Co., 562 S.W.2d 538 (Tex. Civ. App. El Paso 1978).
- ³ Hiles v. Arnie & Co., P.C., 402 S.W.3d 820 (Tex. App. Houston 14th Dist. 2013), review denied, (May 2, 2014).
- ⁴ Hiles v. Arnie & Co., P.C., 402 S.W.3d 820 (Tex. App. Houston 14th Dist. 2013), review denied, (May 2, 2014).
- ⁵ In re Henry, 274 S.W.3d 185 (Tex. App. Houston 1st Dist. 2008).
- ⁶ V. D. Anderson Co. v. Young, 128 Tex. 631, 101 S.W.2d 798 (1937).
- ⁷ Ryan v. Campbell Sixty-Six Exp., 365 Mo. 127, 276 S.W.2d 128 (1955).
- ⁸ City Bank & Trust Co. v. Graf, 175 Ga. 340, 165 S.E. 238 (1932) (collusive foreclosure of trust deed by trustee without consent of bondholders).
- ⁹ LaFrance v. LaFrance, 127 Conn. 149, 14 A.2d 739 (1940).

1 Am. Jur. 2d Abatement, Survival, and Revival § 11

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a. Fundamental Principles

§ 11. Personal action in foreign jurisdiction

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A.L.R. Library

[Stay of civil proceedings pending determination of action in another state or country, 19 A.L.R.2d 301](#)

The mere pendency of an in personam action in one jurisdiction is not a ground for abating a suit in another jurisdiction between the same parties and involving the same subject matter¹ even though the second suit has the other elements necessary for an abatement.² The reason for this rule is that every state is entirely sovereign and unrestricted in its powers, whether legislative, judicial, or executive, and therefore each state does not acknowledge the right of any other state to hinder its own sovereign acts or proceedings.³

Factors that should be considered when deciding whether to grant an abatement in such a circumstance include:

- (1) comity;
 - (2) the prevention of multiplicity, vexation, and harassment;
 - (3) the likelihood of obtaining complete relief in the foreign jurisdiction; and
 - (4) the res judicata effect of a foreign judgment in the local forum.⁴
- Each court is free to proceed in its own way and in its own time, without reference to the proceedings in the other,⁵ at least until a judgment is obtained in one court that may be set up as res judicata in the other.⁶ Thus, the pendency of action on the

same claim between courts in different countries,⁷ between different state courts,⁸ or between a federal district court and a state court does not constitute a good plea in abatement.⁹

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- ¹ Penn General Casualty Co. v. Commonwealth of Pennsylvania ex rel. Schnader, 294 U.S. 189, 55 S. Ct. 386, 79 L. Ed. 850 (1935); Ashton Grove L.C. v. Jackson Walker L.L.P., 366 S.W.3d 790 (Tex. App. Dallas 2012).
- ² Kline v. Burke Const. Co., 260 U.S. 226, 43 S. Ct. 79, 67 L. Ed. 226, 24 A.L.R. 1077 (1922); McClellan v. Carland, 217 U.S. 268, 30 S. Ct. 501, 54 L. Ed. 762 (1910).
- ³ Ashton Grove L.C. v. Jackson Walker L.L.P., 366 S.W.3d 790 (Tex. App. Dallas 2012).
- ⁴ Crain v. Lucent Technologies, Inc., 317 Ill. App. 3d 486, 250 Ill. Dec. 876, 739 N.E.2d 639 (5th Dist. 2000).
- ⁵ Birmingham v. M. & W. Min. Co., 163 Kan. 66, 180 P.2d 615 (1947).
- ⁶ Singer v. Dong Sup Cha, 379 Pa. Super. 556, 550 A.2d 791 (1988).
- ⁷ Drexel Burnham Lambert Group, Inc. v. Galadari, 134 B.R. 719 (S.D. N.Y. 1991); Dayan v. McDonald's Corp., 64 Ill. App. 3d 984, 21 Ill. Dec. 761, 382 N.E.2d 55 (1st Dist. 1978).
- ⁸ Welch v. Contreras, 174 S.W.3d 53 (Mo. Ct. App. W.D. 2005); Crown Leasing Corp. v. Sims, 92 S.W.3d 924 (Tex. App. Texarkana 2002).
- ⁹ § 19.

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1 Am. Jur. 2d Abatement, Survival, and Revival § 12

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I. Abatement

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2. Another Action Pending

b. When Action Considered Pending

§ 12. When action considered pending, generally

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West's Key Number Digest, [Abatement and Revival](#)  4 to 17

In order for an action to abate due to the pendency of another action, the former action must be actually pending when the second suit is begun.¹ The question of a pending prior action is purely a question of law, determinable from inspection of the pleadings.² An action is generally considered pending, for the purpose of abating a subsequent action, from the time the action is commenced³ until its final determination⁴ by judgment or order,⁵ or while it is still subject to attack by a motion for a new trial,⁶ or while it is being appealed,⁷ or until the time for appeal is passed unless the judgment is sooner satisfied.⁸

A fair test of the sufficiency of the defense of a pendency of a prior action is whether a final judgment in the prior suit would be conclusive between the parties and operate as a bar to the second⁹ or whether the first suit would be res judicata to the second.¹⁰ A prior action is still pending despite the filing of amended complaints since an amendment to a complaint relates back to the filing of the original complaint.¹¹

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¹ [Moore v. Lamar](#), 182 Ga. App. 708, 356 S.E.2d 742 (1987); [Underwood v. Dooley](#), 197 N.C. 100, 147 S.E. 686, 64 A.L.R. 656 (1929).

² [PNC Bank, Nat. Ass'n v. Bluestream Technology, Inc.](#), 2010 PA Super 215, 14 A.3d 831 (2010).

³ [Chamley v. Gibbons](#), 191 Or. App. 113, 80 P.3d 524 (2003) (filing of with clerk of court commences suit).

⁴ [Williams v. State of California](#), 62 Cal. App. 3d 960, 133 Cal. Rptr. 539 (1st Dist. 1976).

§ 12. When action considered pending, generally, 1 Am. Jur. 2d Abatement, Survival,...

As to when an action is commenced for abatement purposes, see §§ 13, 15.

As to the pendency of actions, generally, see Am. Jur. 2d, Pleading[WestlawNext® Search Query].

5 Salem Park, Inc. v. Town of Salem, 149 Conn. 141, 176 A.2d 571 (1961); McDowell v. Blythe Bros. Co., 236 N.C. 396, 72 S.E.2d 860 (1952).

6 Ex parte Godeke, 163 Tex. 387, 355 S.W.2d 701 (1962).

7 Glass v. Alton Ochsner Medical Foundation, 832 So. 2d 403 (La. Ct. App. 4th Cir. 2002), writ denied, 839 So. 2d 36 (La. 2003) and writ denied, 839 So. 2d 37 (La. 2003).

8 § 16.

9 H. L. Raburn & Co. v. Massey-Draughon Business College, 388 So. 2d 1225 (Ala. Civ. App. 1980).

10 Wagoner v. Chevron USA, Inc., 121 So. 3d 727 (La. Ct. App. 2d Cir. 2013), writ denied, 126 So. 3d 470 (La. 2013) and writ denied, 126 So. 3d 471 (La. 2013) and writ denied, 129 So. 3d 523 (La. 2013) and writ denied, 126 So. 3d 473 (La. 2013).

11 L. B. Corp. v. Jessop Steel Co., 42 Pa. D. & C.3d 363, 1985 WL 5937 (C.P. 1985).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 13

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b. When Action Considered Pending

§ 13. When action commences

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Local rules and statutes vary as to what constitutes the commencement of an action that will abate a subsequent action. Some such rules and statutes provide that an action is commenced by the filing of the complaint or petition,¹ and an action commenced merely by service of a summons with notice is not considered pending.² Others provide that an action has not commenced until process has been issued³ or served,⁴ or in one instance involving criminal and civil causes of action, until the commencement of trial.⁵

An order vacating a judgment because of a lack of service on the defendant leaves the action as though a petition had been filed but service of process not yet obtained. In states where an action is not commenced until service of process is completed, such an action cannot be the ground for abatement of a second action. However, when the plaintiff appeals the vacatur, and the defendant appears and answers in the appellate court in the first action, it becomes a pending action and a proper ground for an order of abatement.⁶

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¹ [Connecticut Fund for Environment, Inc. v. Upjohn Co.](#), 660 F. Supp. 1397 (D. Conn. 1987); [Art Technology Group, Inc. v. Puritan's Pride, Inc.](#), 716 F. Supp. 2d 93 (D. Mass. 2010) (applying New York law); [Board of Trustees of Sheriff's Pension and Relief Fund v. City of New Orleans](#), 813 So. 2d 543 (La. Ct. App. 4th Cir. 2002); [Chamley v. Gibbons](#), 191 Or. App. 113, 80 P.3d 524 (2003).

² [Art Technology Group, Inc. v. Puritan's Pride, Inc.](#), 716 F. Supp. 2d 93 (D. Mass. 2010) (applying New York law).

§ 13. When action commences, 1 Am. Jur. 2d Abatement, Survival, and Revival § 13

- ³ B.M.C. Durfee Trust Co. v. Turner, 299 Mass. 276, 12 N.E.2d 847 (1938); Clark v. Craven Regional Medical Authority, 326 N.C. 15, 387 S.E.2d 168 (1990) (action is pending from time of issuance of the summons).
- ⁴ Connecticut Fund for Environment, Inc. v. Upjohn Co., 660 F. Supp. 1397 (D. Conn. 1987); State ex rel. J.E. Dunn, Jr. & Associates, Inc. v. Schoenlaub, 668 S.W.2d 72 (Mo. 1984); Laughon v. Silver State Shopping Center, 109 Nev. 820, 858 P.2d 44 (1993).
- ⁵ State v. Stabile, 443 So. 2d 398 (Fla. 4th DCA 1984).
- ⁶ Davis v. Rowland, 1952 OK 144, 207 Okla. 19, 246 P.2d 376 (1952).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 14

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b. When Action Considered Pending

§ 14. Effect of dismissal or discontinuance of prior action

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An action is no longer considered to be “pending” for purposes of the abatement of a separate action if it has been effectively dismissed, discontinued, or otherwise terminated.¹ There is, however, authority to the contrary.² Thus, a plea in abatement setting up the pendency of a prior action is not good, though the prior action was pending when the second was commenced, where the prior action was dismissed or otherwise terminated before the plea in abatement was filed.³ In a number of jurisdictions, a dismissal of the prior suit, made at any time before the trial of the subsequent action, completely disposes of a plea or answer in abatement based on a former action pending.⁴ In some jurisdictions, the plea in abatement in the second action is not good where the first action was terminated during the course of the trial of the second action⁵ although the admission of proof of termination of the first action to defeat the plea of abatement during the trial of the second may depend on such factors as prior attempts at abatement, that both actions were pending before the same court, or other extenuating circumstances.⁶ Entry of an order or judgment of dismissal in the first action is generally necessary in order to preclude abatement of the subsequent action.⁷ Where a court order of dismissal is required, the prior action, in the absence of such an order, may be deemed still pending.⁸ Where a plaintiff is entitled as a matter of right to an order of dismissal, the court's failure, on the plaintiff's proper motion, to order dismissal may not lead to abatement of the subsequent action,⁹ nor is a pending suit ground for abatement of a subsequent action where the failure to dismiss the first comes about through inadvertence or excusable neglect.¹⁰

Proper notice of the discontinuance of the first action before commencement of the second may be deemed effective to preclude abatement of a later action.¹¹

The improper entry of an order of nonsuit by a clerk of court, made in excess of his or her power, is void and does not preclude an otherwise proper abatement of a subsequent action.¹² Neither will a plaintiff's unauthorized dismissal or discontinuance of his or her prior action prevent abatement of a second action¹³ although some courts reject this rule in its application to a dismissal or discontinuance in vacation or merely pending a formal order of court.¹⁴ Where payment of costs

is made a condition precedent to dismissal or discontinuance of the prior action, failure to pay those costs renders the dismissal or discontinuance ineffective to preclude abatement of a subsequent action.¹⁵

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Footnotes

- ¹ Trapnell v. Hunter, 785 S.W.2d 426 (Tex. App. Corpus Christi 1990).
- ² Beauregarde v. Capitol Amusement Co., 301 Mass. 142, 16 N.E.2d 672, 118 A.L.R. 1474 (1938) (second of two actions between same parties for same cause abates if first was still pending when second brought even though first terminated before plea in abatement in second filed or decided).
- ³ Allstate Ins. Co. v. Redman Homes, Inc., 302 Ark. 335, 789 S.W.2d 454 (1990); Bouldin v. Aragona-Garcia Enterprises, Inc., 161 Ga. App. 396, 288 S.E.2d 673 (1982); E.A.U., Inc. v. R. Webbe Corp., 794 S.W.2d 679 (Mo. Ct. App. E.D. 1990) (parties agreed to voluntary mutual dismissal); Munson, Munson & Porter, P. C. v. Robinson, 634 S.W.2d 32 (Tex. App. Tyler 1982).
- ⁴ Schaub v. Carolina Const. Co., 365 Mich. 514, 113 N.W.2d 796 (1962); Dillard v. Owens, 122 S.W.2d 76 (Mo. Ct. App. 1938); Hambrick v. Spalding, 116 W. Va. 235, 179 S.E. 807 (1935).
- ⁵ Collins v. Ramish, 182 Cal. 360, 188 P. 550 (1920); Oklahoma Press Pub. Co. v. Gulager, 1934 OK 284, 168 Okla. 245, 32 P.2d 723 (1934).
- ⁶ Oklahoma Press Pub. Co. v. Gulager, 1934 OK 284, 168 Okla. 245, 32 P.2d 723 (1934).
- ⁷ Bisceglia Motor Sales, Inc. v. Studebaker-Packard Corp., 367 Mich. 472, 116 N.W.2d 884 (1962).
- ⁸ State ex rel. O'Connell v. Nangle, 365 Mo. 198, 280 S.W.2d 96 (1955).
- ⁹ Kelly v. W. C. Turnbow Petroleum Corp., 137 S.W.2d 216 (Tex. Civ. App. Texarkana 1940) (disapproved of on other grounds by, Greenberg v. Brookshire, 640 S.W.2d 870 (Tex. 1982)).
- ¹⁰ Campbell v. Nelson, 102 Utah 78, 125 P.2d 413 (1942).
- ¹¹ Stark v. Crowell, 117 Vt. 424, 94 A.2d 592 (1953).
- ¹² Moore v. Moore, 224 N.C. 552, 31 S.E.2d 690 (1944).
- ¹³ Harrison v. Illinois Cent. R. Co., 219 Miss. 401, 69 So. 2d 218 (1954).
- ¹⁴ Martin v. Richmond Cotton Oil Co., 194 Mo. App. 106, 184 S.W. 127 (1916); Stark v. Crowell, 117 Vt. 424, 94 A.2d 592 (1953).
- ¹⁵ Mashunkashey v. Brewer, 1936 OK 354, 177 Okla. 253, 58 P.2d 564 (1936).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 15

American Jurisprudence, Second Edition | May 2021 Update

Abatement, Survival, and Revival

John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

b. When Action Considered Pending

§ 15. Effect of dismissal or discontinuance of prior action—Abandonment of prior action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  4 to 17

Under some circumstances, a prior action may be deemed to have been abandoned, which prevents abatement of the second action.¹ Thus, in some jurisdictions, a suit may be terminated by lack of diligence in bringing it to trial; where it is off docket for a stated period of time, it is deemed abandoned and automatically dismissed and will not abate a second suit based on the same cause of action.² However, in at least one instance, a suit commenced some 17 years previously was allowed to stand and a later suit was abated where it was said that to dismiss the earlier suit would have disturbed the equities of some of the parties.³

Where a suit is merely filed and no further activity in the matter occurs for a period of time,⁴ or where there appears to be no bona fide intention to obtain service and prosecute the suit,⁵ there is not such commencement of the suit as the law relating to abatement contemplates.

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Footnotes

¹ [Hight v. Harris](#), 188 N.C. 328, 124 S.E. 623 (1924); [Walker v. Vandiver](#), 133 Tenn. 423, 181 S.W. 310 (1915).

² [Cantor v. Mahana Textiles, Inc.](#), 17 Misc. 2d 809, 187 N.Y.S.2d 885 (Sup 1959); [Moser v. John F. Buckner & Sons](#), 320 S.W.2d 900 (Tex. Civ. App. Waco 1959), writ refused n.r.e.

³ [Whaley v. Slater](#), 202 S.C. 182, 24 S.E.2d 266 (1943).

⁴ [Doty v. West](#), 75 Ohio L. Abs. 348, 144 N.E.2d 469 (Ct. App. 10th Dist. Franklin County 1956); [Reed v. Reed](#), 158

Tex. 298, 311 S.W.2d 628 (1958) (whatever the intention of one filing first suit, filer's lack of diligence afterwards in getting out citation and otherwise prosecuting suit ordinarily defeats a plea of prior action pending against second suit).

- ⁵ V. D. Anderson Co. v. Young, 128 Tex. 631, 101 S.W.2d 798 (1937).
A plea in abatement is properly overruled where the party asserting dominant jurisdiction shows its lack of intent to prosecute the first lawsuit by an unreasonable delay in procuring a citation. [Southern County Mut. Ins. Co. v. Ochoa](#), 19 S.W.3d 452 (Tex. App. Corpus Christi 2000), on reh'g, (May 11, 2000).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 16

American Jurisprudence, Second Edition | May 2021 Update

Abatement, Survival, and Revival
John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

b. When Action Considered Pending

§ 16. Pendency in reviewing court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  4 to 17

A review proceeding generally may be pleaded in abatement of a second action.¹ Accordingly, a defendant may assert, as an affirmative defense requiring dismissal, that a substantially identical, earlier-filed action is pending on appeal.² A judgment may be interposed in abatement of a second trial of the same issues notwithstanding its operation is suspended by appeal, even in those jurisdictions where it cannot be used in bar of the second action.³

The pendency of an appeal in one action does not ipso facto abate or stay the second action; the matter must be properly pleaded in the second action.⁴

Where an action is deemed pending until final determination on review or until the time for such review has passed, a second proceeding may be abated although no appeal has been taken if the time for appeal has not expired.⁵

Where the first suit is dismissed and an appeal from the order of dismissal is taken, the second suit will not be abated on the ground of pendency since the fact that an appeal has been taken and is pending but undetermined has no effect upon the situation and does not detract from the force of an order of dismissal.⁶ However, in some jurisdictions the second suit is abated although the pendency of an appeal in the prior action is from a judgment of nonsuit⁷ or order of dismissal.⁸

An action generally is not considered pending for the purposes of abatement of another action where the appeal is abandoned,⁹ the review proceedings are defective,¹⁰ or the appeal is dismissed.¹¹ However, there is authority to the contrary.¹²

Abatement of a second-filed appeal is an appropriate remedy where appeals from a judgment of a trial court are filed in multiple courts of appeals; the first-filed appeal is given priority.¹³

Where a judgment is reversed on appeal and the cause is remanded, the action continues pending through a second appeal and

can be pleaded in abatement.¹⁴

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Footnotes

- ¹ [Argo v. Moncus](#), 725 So. 2d 995 (Ala. Civ. App. 1998); [Bellon Wrecking & Salvage Co. v. David Orf, Inc.](#), 983 S.W.2d 541 (Mo. Ct. App. E.D. 1998) (appeal of arbitration award pending); [Clark v. Craven Regional Medical Authority](#), 326 N.C. 15, 387 S.E.2d 168 (1990).
- ² [Hyman v. City Of Gastonia](#), 466 F.3d 284 (4th Cir. 2006) (applying N. C. law).
- ³ [Baker v. Eilers' Music Co.](#), 175 Cal. 657, 166 P. 1008 (1917).
- ⁴ [Neblett v. Pacific Mut. Life Ins. Co. of Cal.](#), 22 Cal. 2d 393, 139 P.2d 934 (1943).
- ⁵ [L.A. Draper & Son, Inc. v. Wheelabrator-Frye, Inc.](#), 454 So. 2d 506 (Ala. 1984) (action deemed pending in federal court so long as party's right to appeal has not yet been exhausted or expired); [Williams v. State of California](#), 62 Cal. App. 3d 960, 133 Cal. Rptr. 539 (1st Dist. 1976).
- ⁶ [Solarana v. Industrial Electronics, Inc.](#), 50 Haw. 22, 428 P.2d 411 (1967); [Jacob Goodman & Co. v. New York Tel. Co.](#), 137 N.Y.S.2d 556 (Sup 1954), rev'd in part on other grounds, modified in part on other grounds, 285 A.D. 404, 137 N.Y.S.2d 797 (1st Dep't 1955), judgment aff'd, 309 N.Y. 258, 128 N.E.2d 406 (1955).
- ⁷ [Collins v. Ramish](#), 182 Cal. 360, 188 P. 550 (1920).
- ⁸ [Rose v. Finley's Ex'r](#), 256 Ky. 565, 76 S.W.2d 637 (1934).
- ⁹ [McCook v. Comegys](#), 169 La. 701, 125 So. 860 (1929).
- ¹⁰ [Commercial Nat. Bank v. Sanders](#), 139 La. 622, 71 So. 891 (1916).
- ¹¹ [State ex inf. McKittrick ex rel. City of California v. Missouri Utilities Co.](#), 339 Mo. 385, 96 S.W.2d 607, 106 A.L.R. 1169 (1936).
- ¹² [Collins v. Ramish](#), 182 Cal. 360, 188 P. 550 (1920) (fact that appellant not diligently prosecuting appeal or practically abandoned it was immaterial).
- ¹³ [Miles v. Ford Motor Co.](#), 914 S.W.2d 135 (Tex. 1995) (abatement will protect second appellant's right to proceed in chosen forum if at any time it becomes apparent that first appeal was merely a sham).
- ¹⁴ [Mutual Orange Distributors v. Agricultural Prorate Commission of California](#), 30 F. Supp. 937 (S.D. Cal. 1940).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 17

American Jurisprudence, Second Edition | May 2021 Update

Abatement, Survival, and Revival

John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

c. Jurisdictional Considerations

§ 17. Jurisdiction required of first forum

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  1 to 3, 10.1 to 14

In order for a pending action to be pleaded in abatement of a subsequent action, the court before which the first action is pending must have jurisdiction of the pending claims¹ or subject matter; otherwise, the prior action will not operate to abate a second action in a proper court even though it is for the same cause or relief and between the same parties.² Similarly, a first suit is not ground for abatement of a second where the first court does not have jurisdiction of the parties³ or where a lack of personal jurisdiction of a party prevents the first forum from granting all the relief to which a party is entitled.⁴

A court that has general jurisdiction of the matters in a stated cause of action and has acquired jurisdiction of the parties is the sole judge during the time of its own jurisdiction of the action pending before it.⁵ A second court, without power to review the actions of the first court, has no authority to correct the actions of the first, however erroneous it may consider those actions to be, and must sustain a plea in abatement of an action before it based on the same cause.⁶ However, in some jurisdictions, the second court may abate the action pending before it, despite the first court's ruling that it is without jurisdiction of the cause, where the party filing the second action has appealed from the ruling of the first court.⁷

A court may not lose jurisdiction because the amount being litigated is increased in the second suit, and such amount is outside the first court's jurisdiction; such increase in the amount of money damages alleged is insufficient to avoid abatement on grounds of another suit pending.⁸ On the other hand, a court will lack jurisdiction over an original action where the plaintiff has failed to pay the costs of such thereby rendering abatement of the second action inappropriate.⁹

In some instances, the prior suit may not operate to abate a subsequent action, though the first court has jurisdiction of the cause and can grant the relief prayed for in the petition and both actions are based on the same factual situation, such as where the second action involves relief that the first forum cannot grant.¹⁰ The rule requiring abatement of the second action does not apply where the powers of the court first acquiring jurisdiction of the subject matter of the litigation are so far limited, or so defective, as not to afford that relief to which the parties are either legally or equitably entitled.¹¹

Observation:

A venue statute is not jurisdictional and does not preclude a valid judgment from being rendered on a suit filed in a venue other than that specified in the statute; accordingly, the pendency of such other action requires dismissal of an action subsequently filed in the venue specified by the statute.¹²

When a trial court learns that it lacks jurisdiction to hear a cause, it may not abate a suit to await developments in the positions or claims of the parties that may trigger its jurisdiction; jurisdiction must be present at the outset of the litigation.¹³

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Footnotes

- ¹ [Bhindi Bros. v. Patel](#), 275 Ga. App. 143, 619 S.E.2d 814 (2005).
- ² [Parker v. Rich](#), 140 A.D.2d 177, 527 N.Y.S.2d 424 (1st Dep't 1988); [Perry v. Owens](#), 257 N.C. 98, 125 S.E.2d 287 (1962); [Keener v. Reynolds Transp. Co.](#), 134 W. Va. 712, 61 S.E.2d 629 (1950).
- ³ [Schaub v. Carolina Const. Co.](#), 365 Mich. 514, 113 N.W.2d 796 (1962).
As to general appearance as granting jurisdiction, see Am. Jur. 2d, Pleading[WestlawNext®(r) Search Query].
- ⁴ [In re Oster's Estate](#), 8 N.Y.S.2d 249 (Sur. Ct. 1938), decree aff'd by, 258 A.D. 930, 16 N.Y.S.2d 612 (4th Dep't 1939) (court could not enter valid deficiency judgment against party; mortgagee could properly bring subsequent action against mortgagor for balance due).
- ⁵ See Am. Jur. 2d, Pleading[WestlawNext®(r) Search Query].
- ⁶ [Leonard v. Bye](#), 361 Ill. 185, 197 N.E. 546, 101 A.L.R. 569 (1935); [State v. T. C. Bateson Const. Co.](#), 562 S.W.2d 538 (Tex. Civ. App. El Paso 1978) (pendency of contractor's action in first county gave that court exclusive jurisdiction).
- ⁷ [Myers v. Garland](#), 1927 OK 20, 122 Okla. 157, 252 P. 1090 (1927).
- ⁸ [Township Oil Co. v. State Bank of Fraser](#), 162 Mich. App. 737, 413 N.W.2d 94 (1987).
- ⁹ [Aiken Dermatology & Skin Cancer Clinic, P.A. v. DavLong Systems, Inc.](#), 314 Ga. App. 699, 725 S.E.2d 835 (2012).
- ¹⁰ [Lyons v. Lyons](#), 1939 OK 164, 185 Okla. 70, 90 P.2d 391 (1939); [Hillsdale Coal & Coke Co. v. Pennsylvania R. Co.](#), 229 Pa. 61, 78 A. 28 (1910).
- ¹¹ [Lyon v. Sharpe](#), 317 Mass. 283, 57 N.E.2d 910 (1944).
- ¹² [Mark Twain Life Ins. Corp. v. Cory](#), 283 Ark. 55, 670 S.W.2d 809 (1984).
- ¹³ [Freedman v. University of Houston](#), 110 S.W.3d 504, 179 Ed. Law Rep. 923 (Tex. App. Houston 1st Dist. 2003).

1 Am. Jur. 2d Abatement, Survival, and Revival § 18

American Jurisprudence, Second Edition | May 2021 Update

Abatement, Survival, and Revival

John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

c. Jurisdictional Considerations

§ 18. Actions in rem, quasi in rem, or mixed

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  1 to 3, 10.1 to 13

A.L.R. Library

[Stay of civil proceedings pending determination of action in federal court in same state, 56 A.L.R.2d 335](#)

Where a court of one jurisdiction has acquired jurisdiction of the res, in an action in rem, or has taken steps equivalent to the exercise of dominion over it, that court has exclusive jurisdiction of the case.¹ Thus, where the proceeding is in rem or quasi in rem, a court may not exercise jurisdiction over the res after the jurisdiction of another court, or of a court of another sovereignty, has properly attached to it.² The tribunal whose jurisdiction first attaches holds it, to the exclusion of the other, until its duty is fully performed and the jurisdiction involved is fully exhausted.³

Observation:

The distinction between in an personam action and an in rem or quasi in rem action is significant and justifies different treatment for purposes of determining whether the prior action abates a subsequently filed action. In an action in rem or quasi in rem, the first court to acquire jurisdiction over the property has jurisdiction to the exclusion of a later court. The rationale is that there is only one res and first court to assume jurisdiction over it withdraws it from the judicial power of the other as if it had been carried physically into a different territorial sovereignty. An action in personam seeks personal judgment and not control over the res, such that an in personam action presents no conflict with a prior action in another jurisdiction either before or after judgment.⁴

Application of this rule does not require that the parties to the actions be precisely the same; substantial identity is all that is necessary.⁵ The rule applies not only to cases where property has actually been seized under judicial process before a second suit is instituted in another court but also to suits brought to enforce liens against specific property, to marshal assets, administer trusts, or liquidate insolvent estates, and in all suits of a like nature; the rule is limited, however, to actions that deal either actually or potentially with specific property or objects.⁶ The rule does not apply, though the same res is involved, if the remedies sought in the second action are consistent with,⁷ or merely seek further relief consistent with,⁸ the first action. If the action of the second court will interfere with the control of the res by the first, the second action should be abated.⁹

The pendency of an action seeking a general adjudication of water rights on a stream system does not abate an action between two water users on a tributary since the latter action may aid in the final determination of the matter; however, the second action will be abated if the judgment in the first would drastically change the result of the second.¹⁰ That the same land is involved in two separate actions is not ground for abatement unless the same injuries are in issue and all the matters involved can be tried in the prior case.¹¹

Where jurisdiction of the res is not obtained by the first court, the pendency of a prior suit in rem in one state cannot, as a general rule, be pleaded in abatement or in bar of a subsequent suit in another state though both suits are between the same parties and on the same cause of action¹² even if the courts of the state where the prior suit is pending have complete jurisdiction.¹³

The court first acquiring jurisdiction of the res retains exclusive jurisdiction in mixed actions, or those in which a specific thing together with performance of a personal obligation are demanded in one action,¹⁴ provided the relief sought in each facet of the action is in large degree identical.¹⁵

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Footnotes

- ¹ Gregg v. Superior Court, 194 Cal. App. 3d 134, 239 Cal. Rptr. 380 (1st Dist. 1987).
- ² Tonnemacher v. Touche Ross & Co., 186 Ariz. 125, 920 P.2d 5 (Ct. App. Div. 1 1996); Roshelli v. Sperry, 57 N.C. App. 305, 291 S.E.2d 355 (1982).
- ³ Kline v. Burke Const. Co., 260 U.S. 226, 43 S. Ct. 79, 67 L. Ed. 226, 24 A.L.R. 1077 (1922); Martinez v. Martinez, 1945-NMSC-009, 49 N.M. 83, 157 P.2d 484 (1945).
- ⁴ Tonnemacher v. Touche Ross & Co., 186 Ariz. 125, 920 P.2d 5 (Ct. App. Div. 1 1996).
- ⁵ Haas v. Righeimer, 220 Ill. 193, 77 N.E. 69 (1906).
- ⁶ Kline v. Burke Const. Co., 260 U.S. 226, 43 S. Ct. 79, 67 L. Ed. 226, 24 A.L.R. 1077 (1922); Farmers' Loan & Trust Co. v. Lake St. Elevated R. Co., 177 U.S. 51, 20 S. Ct. 564, 44 L. Ed. 667 (1900).
- ⁷ Fischer v. American United Life Ins. Co., 314 U.S. 549, 62 S. Ct. 380, 86 L. Ed. 444 (1942).
- ⁸ Old Colony Trust Co. v. Wood, 321 Mass. 519, 74 N.E.2d 141 (1947).
- ⁹ Baker v. Mueller, 222 F.2d 180 (7th Cir. 1955).
- ¹⁰ Mitchell v. Spanish Fork West Field Irr. Co., 1 Utah 2d 313, 265 P.2d 1016 (1954).
- ¹¹ Wilson v. Sanders, 217 Ark. 326, 230 S.W.2d 19 (1950).

- ¹² Chicago, R. I. & P. Ry. Co. v. Schendel, 270 U.S. 611, 46 S. Ct. 420, 70 L. Ed. 757, 53 A.L.R. 1265 (1926); Simmons v. Superior Court in and for Los Angeles County, 96 Cal. App. 2d 119, 214 P.2d 844, 19 A.L.R.2d 288 (2d Dist. 1950).
- ¹³ Birmingham v. M. & W. Min. Co., 163 Kan. 66, 180 P.2d 615 (1947).
As to the abatement of an action by reason of a writ of attachment or garnishment in a pending action, see Am. Jur. 2d, Pleading[WestlawNext®(r) Search Query].
- ¹⁴ International Printing Pressmen & Assistants' Union of North America v. Rebenson, 350 Ill. App. 156, 112 N.E.2d 192 (1st Dist. 1953).
- ¹⁵ Hall v. Milligan, 221 Ala. 233, 128 So. 438, 69 A.L.R. 618 (1930).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 19

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Abatement, Survival, and Revival
John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

c. Jurisdictional Considerations

§ 19. Federal and state courts

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  1 to 3, 10.1 to 13

A.L.R. Library

[Stay of action in federal court until determination of similar action pending in state court, 5 A.L.R. Fed. 10](#)

Federal and state courts with concurrent jurisdiction over civil actions are considered courts of separate jurisdictional sovereignties.¹ Identical cases between the same parties may be pending simultaneously in both federal and state court,² meaning that defendants may be required to simultaneously defend both suits.³ The pendency of a personal action in either a state or a federal court generally does not entitle the defendant to abatement of a like action in the other.⁴ In fact, the federal court ordinarily may not abdicate its authority or duty in favor of state jurisdiction.⁵ However, there may be exceptional circumstances that justify deference to state courts.⁶ To insure that only exceptional cases are dismissed from federal court in favor of a parallel state proceedings, the district court must approach its decision with the balance heavily weighted in favor of the exercise of jurisdiction.⁷ Factors that a district court can consider in deciding whether such exceptional circumstances exist are:

- (1) whether the State has assumed jurisdiction over property;
- (2) the inconvenience in the federal form;
- (3) the desirability of avoiding piecemeal litigation;

- (4) the order in which jurisdiction was obtained by the concurrent forum;
- (5) the source of the governing law, state or federal;
- (6) the adequacy of the state court action to protect the federal plaintiff's rights;
- (7) the relative progress of state and federal proceedings;
- (8) the presence or absence of concurrent jurisdiction;
- (9) the availability of removal; and
- (10) the vexatious or contrived nature of the federal claim.⁸

Where a prior pending action is in federal court sitting in the same state as the subsequent state action, the court may, but is not necessarily required to, abate the second action,⁹ particularly where it would be duplicative, uneconomical, and vexatious to proceed.¹⁰ Nevertheless, where the plaintiff's first-filed action is in federal court seeking relief on both federal claims and state-law claims but the federal court has declined to exercise its pendent jurisdiction over the state-law claims, the plaintiff may then pursue the state-law claims in state court without violating the prohibition against pursuing two actions at the same time for the same cause and against the same party.¹¹

The court in which the prior action is pending may opt to stay the subsequent action rather than dismiss it.¹²

In actions in rem, the same rules apply as in other conflicts of jurisdiction, and the court first acquiring jurisdiction of the res retains it until the authority of the court is exhausted or the action dismissed.¹³

CUMULATIVE SUPPLEMENT

Cases:

Prior pending action doctrine did not apply in breach of contract action against operator of business involving buying, raising, selling, and brokering sale of alpacas, where current proceeding was in federal court and prior pending action was in state court. [Ferrara v. Munro](#), 585 B.R. 269 (D. Conn. 2018).

[END OF SUPPLEMENT]

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Footnotes

- ¹ [Fidelity Federal Bank v. Larken Motel Co.](#), 764 F. Supp. 1014 (E.D. Pa. 1991); [Baptist Health v. Murphy](#), 2010 Ark. 358, 373 S.W.3d 269 (2010); [Crawford v. Morris Transp., Inc.](#), 990 So. 2d 162 (Miss. 2008).
- ² [National Bank of Commerce v. Dow Chemical Co.](#), 338 Ark. 752, 1 S.W.3d 443 (1999).
- ³ [Williams v. Stant USA Corp.](#), 2015 Ark. App. 180, 458 S.W.3d 755 (2015).
- ⁴ [Commerce Oil Refining Corp. v. Miner](#), 303 F.2d 125 (1st Cir. 1962).
- ⁵ [Clark v. Wells Fargo Bank, N.A.](#), 24 So. 3d 424 (Ala. 2009).
- ⁶ [Moses H. Cone Memorial Hosp. v. Mercury Const. Corp.](#), 460 U.S. 1, 103 S. Ct. 927, 74 L. Ed. 2d 765 (1983); [Colorado River Water Conservation Dist. v. U. S.](#), 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976) (stay or dismissal by federal court in face of concurrent and related state case permitted, on grounds of wise judicial

administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation); [Berman Enterprises, Inc. v. Jorling](#), 3 F.3d 602 (2d Cir. 1993) (federal court required to abstain where decisive issue hinges entirely on proper meaning and reach of complex and bewildering state statutes and regulations; as contemplated by federal law, states are given considerable leeway in protecting purity of their own waters); [Fidelity Federal Bank v. Larken Motel Co.](#), 764 F. Supp. 1014 (E.D. Pa. 1991) (state or federal actions need not be identical in every way in order for deference to state courts under exceptional circumstances to be proper).

⁷ [Burns v. Watler](#), 931 F.2d 140 (1st Cir. 1991).

⁸ [Associated Dry Goods Corp. v. Towers Financial Corp.](#), 920 F.2d 1121, 18 Fed. R. Serv. 3d 501 (2d Cir. 1990); [LaDuke v. Burlington Northern R. Co.](#), 879 F.2d 1556 (7th Cir. 1989); [Clements v. J.D. O'Brien Olds-Cadillac-GMC, Inc.](#), 744 F. Supp. 838 (N.D. Ill. 1990) (abatement pending resolution of state court action called for where legal and factual issues raised in actions were identical though claims were labeled differently; state court suit initiated years earlier, state court could adequately protect plaintiff's rights, and federal action filed merely as means to delay trial in state court).

⁹ [National Bank of Commerce v. Dow Chemical Co.](#), 327 Ark. 504, 938 S.W.2d 847 (1997); [Theodore v. Elmhurst College](#), 99 Ill. App. 3d 126, 54 Ill. Dec. 547, 425 N.E.2d 59 (2d Dist. 1981); [Eways v. Governor's Island](#), 326 N.C. 552, 391 S.E.2d 182 (1990).

¹⁰ [Hogan v. Utah Telecommunication Open Infrastructure Agency](#), 857 F. Supp. 2d 1185 (D. Utah 2012), *aff'd*, 566 Fed. Appx. 636 (10th Cir. 2014).

¹¹ [Ex parte J.E. Estes Wood Co., Inc.](#), 42 So. 3d 104 (Ala. 2010).

¹² [Associated Dry Goods Corp. v. Towers Financial Corp.](#), 920 F.2d 1121, 18 Fed. R. Serv. 3d 501 (2d Cir. 1990); [LaDuke v. Burlington Northern R. Co.](#), 879 F.2d 1556 (7th Cir. 1989); [Attwood v. Mendocino Coast Dist. Hosp.](#), 886 F.2d 241 (9th Cir. 1989).

¹³ [Penn General Casualty Co. v. Commonwealth of Pennsylvania ex rel. Schnader](#), 294 U.S. 189, 55 S. Ct. 386, 79 L. Ed. 850 (1935); [State ex rel. Great Am. Ins. Co. v. Jones](#), 396 S.W.2d 601 (Mo. 1965).

1 Am. Jur. 2d Abatement, Survival, and Revival § 20

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Abatement, Survival, and Revival

John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

c. Jurisdictional Considerations

§ 20. Federal and state courts—After removal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  1 to 3, 10.1 to 13

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[Stay of action in federal court until determination of similar action pending in state court](#), 5 A.L.R. Fed. 10

There is some difference of opinion as to whether the general rule that an action pending in federal court does not abate a subsequent action in a state court¹ applies after a cause is removed from a state to a federal court and a new action for the same cause is then commenced in the state court. According to one line of authorities, if an action is brought in a state court and removed to federal court, and while it is there pending another suit is brought in the state court for the same cause of action by the same plaintiff against the same defendant, the action pending in the federal court may be pleaded in abatement of the second action.² Some jurisdictions take the view that when a cause is removed to a federal court, under the statutory provision that “the state court shall proceed no further unless and until the case is remanded,”³ the state court loses jurisdiction of the cause of action; hence during the pendency of the removed case in federal court, any case filed in a state court based on that cause of action will be abated.⁴ In other cases, however, the courts, without especially considering the effect of the fact that the first action was commenced in state court and then removed to federal court, apply the general rule and hold that the pendency of the action in federal court does not abate the subsequent action.⁵

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Footnotes

¹ § 19.

² Nashville, C. & St. L. Ry. v. Hubble, 140 Ga. 368, 78 S.E. 919 (1913).

³ 28 U.S.C.A. § 1446(d) (removal from state to federal court).

⁴ Young v. Herald, 138 Ind. App. 454, 209 N.E.2d 525 (1965) (pendency of prior suit in federal court is not generally bar unless federal action is one that has been removed from state court); Fire Ass'n of Philadelphia v. General Handkerchief Corporation, 304 N.Y. 382, 107 N.E.2d 499 (1952).

⁵ Kesterson v. Southern Ry. Co., 146 N.C. 276, 59 S.E. 871 (1907); Northwest Engineering Co. v. Chadwick Machinery Co., 93 S.W.2d 1223 (Tex. Civ. App. El Paso 1936), writ dismissed.

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1 Am. Jur. 2d Abatement, Survival, and Revival § 21

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Abatement, Survival, and Revival

John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

c. Jurisdictional Considerations

§ 21. Different federal courts

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West's Key Number Digest

West's Key Number Digest, [Abatement and Revival](#)  1 to 3, 10.1 to 13

A litigant should not be able to litigate the same issue at the same time in more than one federal court.¹ It is within a district court's discretion to dismiss a claim that is duplicative of another in a different federal court.² A district court generally may dismiss, transfer, or stay action so that issues presented can be resolved first in an earlier filed action pending in another district court.³ While courts in a circuit generally adhere to a first-filed rule in situations where multiple suits concerning the same subject matter are pending in different federal courts, that general rule is not applicable in cases of compelling circumstances that dictate that the first action instead of second action should be dismissed.⁴

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Footnotes

¹ [Crowley Cutlery Co. v. U.S.](#), 849 F.2d 273 (7th Cir. 1988).

² [White v. Williams](#), 179 F. Supp. 2d 405 (D.N.J. 2002).

³ [New England Machinery, Inc. v. Conagra Pet Products Co.](#), 827 F. Supp. 732 (M.D. Fla. 1993).

⁴ [Stack v. Whitney Nat. Bank](#), 789 F. Supp. 753 (S.D. Miss. 1991), [aff'd](#), 958 F.2d 1078 (5th Cir. 1992).

1 Am. Jur. 2d Abatement, Survival, and Revival § 22

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Abatement, Survival, and Revival

John Bourdeau, J.D.

I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

d. Identity of Parties

§ 22. Identity of parties, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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West's Key Number Digest, [Abatement and Revival](#)  9

For one action to be pleaded in abatement of another, the matter in issue must be between the same,¹ or substantially the same,² parties, or at least parties that represent the same interest.³ A plea in abatement in a second action is insufficient if some of the parties relied on for the requisite identity of parties are not actual participants in one of the actions,⁴ although a party may be impleaded in the earlier suit and made an actual party after the second action is commenced, and thereby the identity of parties necessary to the abatement of the second action may be created.⁵ In other words, for abatement purposes, it is not required that all of the parties be included in the first suit before the second suit is filed provided that the first suit can be amended to bring in all of the necessary and proper parties.⁶ Mere amendment of pleadings in the earlier action to include parties to the second action is insufficient if those parties were not served with process and did not participate in the first action.⁷

A trial court's retention of jurisdiction over all parties in a prior proceeding does not deprive another court of subject matter jurisdiction over a subsequent suit when that claim lacks identity of parties, subject matter, issues involved, and relief demanded essential for abatement of the action.⁸

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Footnotes

¹ [Watson v. Jones](#), 80 U.S. 679, 20 L. Ed. 666, 1871 WL 14848 (1871); [Relinger v. Fox](#), 55 So. 3d 638 (Fla. 2d DCA 2011); [Fackler v. Powell](#), 839 N.E.2d 165 (Ind. 2005) (precisely the same); [Chalona v. Louisiana Citizens Property Ins. Corp.](#), 3 So. 3d 494 (La. Ct. App. 4th Cir. 2008).

² [Philips Electronics, N.V. v. New Hampshire Ins. Co.](#), 295 Ill. App. 3d 895, 230 Ill. Dec. 102, 692 N.E.2d 1268 (1st

Dist. 1998); *Fackler v. Powell*, 839 N.E.2d 165 (Ind. 2005); *Morris v. Leggat*, 877 S.W.2d 899 (Tex. App. Texarkana 1994).

³ *Watson v. Jones*, 80 U.S. 679, 20 L. Ed. 666, 1871 WL 14848 (1871); *Skipper Marine Electronics, Inc. v. Cybernet Marine Products*, 200 Ill. App. 3d 692, 146 Ill. Dec. 361, 558 N.E.2d 324 (1st Dist. 1990) (litigant's interests are sufficiently similar even though the litigants differ in name or number); *J.D. Candler Roofing Co., Inc. v. Dickson*, 149 Mich. App. 593, 386 N.W.2d 605 (1986).

⁴ *Cicero v. Paradis*, 184 So. 2d 212 (Fla. 2d DCA 1966); *Wyatt v. Shaw Plumbing Co.*, 736 S.W.2d 763 (Tex. App. Corpus Christi 1987), writ refused n.r.e., (Oct. 14, 1987) and writ withdrawn, (Apr. 27, 1988) and writ granted, (Apr. 27, 1988) and judgment rev'd on other grounds, 760 S.W.2d 245 (Tex. 1988).

⁵ *Johnson v. Packaging Corp. of America*, 375 S.W.2d 780 (Tex. Civ. App. Fort Worth 1964).

⁶ *In re Coronado Energy E & P Co., L.L.C.*, 341 S.W.3d 479 (Tex. App. San Antonio 2011).

⁷ *Freidus v. Kaufman*, 35 N.J. Super. 601, 114 A.2d 751 (Ch. Div. 1955), judgment aff'd, 36 N.J. Super. 321, 115 A.2d 592 (App. Div. 1955).

⁸ *Swenson v. Thibaut*, 39 N.C. App. 77, 250 S.E.2d 279 (1978).

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I. Abatement

B. Particular Grounds for Abatement

2. Another Action Pending

d. Identity of Parties

§ 23. Plaintiffs

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If the plaintiffs in two actions are different, the first action cannot be pleaded in abatement of the second action even where the defendants are the same and the other requisites of abatement are present.¹ The fact that the plaintiffs in the second action could become a party to a pending action by intervention is ordinarily not a ground for abatement of the subsequent action by the plaintiff in the first action to enforce his or her claim or right.²

For abatement to be appropriate, not only must the plaintiffs be the same but also they must occupy the same status in both suits.³ Thus, an action based on damage to the property of the plaintiff is not abated by a prior action by that plaintiff and another for damages to their joint property although both actions grow out of the same state of facts.⁴ Where two suits are filed by one person against the same defendant based on the same cause of action, the first suit is not grounds for abatement of the second if the plaintiff acts in a different capacity in each suit.⁵

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Footnotes

¹ [Schoonmaker v. Lawrence Brunoli, Inc.](#), 265 Conn. 210, 828 A.2d 64 (2003) (one suit brought against employer by employees, another by Department of Labor); [Lorenz v. Dreske](#), 62 Wis. 2d 273, 214 N.W.2d 753 (1974).

² [Moresca v. Allstate Ins. Co.](#), 231 So. 2d 283 (Fla. 4th DCA 1970).
As to the rule in class or representative actions, see § 27.

³ [Janet Parker, Inc. v. Floyd](#), 269 Ga. App. 59, 603 S.E.2d 485 (2004).

⁴ [Boomer v. Southern California Edison Co.](#), 91 Cal. App. 375, 267 P. 178 (2d Dist. 1928).

⁵ [Pansy v. Massola](#), 207 Misc. 908, 140 N.Y.S.2d 417 (Sup 1955) (where husband brought first suit as individual for medical bills resulting from accident and second suit as administrator of deceased wife's estate, first suit does not abate second one).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 24

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I. Abatement

B. Particular Grounds for Abatement


2. Another Action Pending

d. Identity of Parties

§ 24. Defendants

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Although complete identity of defendants is generally required for the abatement of an action due to the pendency of a prior action,¹ this rule is subject to some exceptions, the determinative factor being whether a defendant has been harassed without reason by successive proceedings for the same cause of action.² If the plaintiffs are the same in both suits and some of the defendants in the second suit were defendants in the prior suit, the common defendants may assert the pendency of the prior action although there are additional defendants in the prior action.³ The same rule may apply to the common defendants when a third person, not a party to the first action, is added as a party defendant in the second action.⁴

One state's courts have formulated that at least one plaintiff and one defendant in common in each action is required to dismiss the suit; complete identity of parties is not a necessity.⁵

In some jurisdictions, the addition of defendants in the second action will not defeat a plea in abatement in that action if the relief sought in the second action could have been fully obtained in the first.⁶ Thus, when the prior action does not include all the parties joined in the second action, a plea in abatement on the ground of a prior action may be sustained if the liability of the new parties is merely secondary and is dependent on the liability of an original defendant; the parties added in the second action are not necessarily true parties.⁷

On the other hand, and in the absence of a compulsory counterclaim statute, the fact that a party is a defendant in a prior action is not ground for abatement of a later action in which he or she seeks to obtain other or further relief although the actions are based on the same cause.⁸ Thus, in an action by a wife against her husband and several of his business associates in which the plaintiff alleged that she had made a separate property investment and that the defendants had failed to account to her for the rents, issues, profits, and principal of the investment, the plaintiff's complaint should not have been dismissed on account of the plaintiff's previous action for dissolution of the marriage; even though the court in the dissolution action had jurisdiction to determine whether, as between the plaintiff and her husband, the investment was separate or community

property, that determination did not affect the action against the other defendants.⁹

Observation:

For the purpose of applying the prior pending action doctrine, a corporate defendant and its agent acting within the scope of his or her employment should be regarded as the same party.¹⁰

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Footnotes

- ¹ [Price v. Southern Ry. Co.](#), 470 So. 2d 1125 (Ala. 1985); [Relinger v. Fox](#), 55 So. 3d 638 (Fla. 2d DCA 2011) (abatement requires a strict identity of parties between the two suits, and it can be ordered only when the defendants in the actions are the same).
- ² [Pappas v. Maxwell](#), 337 Mass. 552, 150 N.E.2d 521 (1958).
- ³ [Nashville, C. & St. L. Ry. v. Hubble](#), 140 Ga. 368, 78 S.E. 919 (1913); [Chapple v. National Hardwood Co.](#), 234 Mich. 296, 207 N.W. 888, 44 A.L.R. 804 (1926).
- ⁴ [Wulfjen v. Dolton](#), 24 Cal. 2d 891, 151 P.2d 846 (1944); [Zachs v. Public Utilities Commission](#), 171 Conn. 387, 370 A.2d 984 (1976) (where liability of telephone company and public utilities commission, defendants in both actions, was identical in the actions, abatement for the pendency of prior action proper despite presence of additional defendants in second action).
- ⁵ [Proietto v. Donohue](#), 189 A.D.2d 807, 592 N.Y.S.2d 457 (2d Dep't 1993); [Morgulas v. J. Yudell Realty, Inc.](#), 161 A.D.2d 211, 554 N.Y.S.2d 597 (1st Dep't 1990).
- ⁶ [Lesavoy v. Lane](#), 304 F. Supp. 2d 520 (S.D. N.Y. 2004), *aff'd in part, vacated in part on other grounds, remanded*, 170 Fed. Appx. 721 (2d Cir. 2006) (addition of defendants not dispositive); [Moore-Mansfield Const. Co. v. Indianapolis, N.C. & T. Ry. Co.](#), 179 Ind. 356, 101 N.E. 296 (1913).
- ⁷ [Cole v. Associated Const. Co.](#), 141 Conn. 49, 103 A.2d 529, 40 A.L.R.2d 1105 (1954).
- ⁸ [Phez Co. v. Salem Fruit Union](#), 103 Or. 514, 201 P. 222, 25 A.L.R. 1090 (1921).
- ⁹ [Beehler v. Beehler](#), 100 Cal. App. 3d 376, 161 Cal. Rptr. 30 (3d Dist. 1979).
- ¹⁰ [Saracino v. Hartford Financial Services Group, Inc.](#), 50 Conn. Supp. 503, 946 A.2d 954 (Super. Ct. 2007).

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1 Am. Jur. 2d Abatement, Survival, and Revival § 25

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I. Abatement

B. Particular Grounds for Abatement


2. Another Action Pending

d. Identity of Parties

§ 25. Reversal of parties

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[Pendency of prior action for absolute or limited divorce between same spouses in same jurisdiction as precluding subsequent action of like nature, 31 A.L.R.2d 442](#)

In some jurisdictions, the requirement that the parties in both actions be identical is mandatory, and abatement will not lie with respect to cross suits pending in the same court where the relationship of the parties is reversed although both suits arise from the same acts or transactions.¹ In other jurisdictions, where the cause of action in both suits is substantially the same, it is immaterial that the position of the parties in the first suit is changed or reversed in the second suit.² In other words, whether a party is a plaintiff or a defendant is irrelevant for the purpose of the “same parties” element.³

In divorce actions particularly, the reversal of parties is generally immaterial if the other elements of abatement are present.⁴

In order to abate a second suit brought by the defendant in the first suit, it must appear that the matters pleaded in the second suit could be set out as an affirmative defense, counterclaim, or setoff, and could be litigated in the first suit.⁵ Where a party can have adequate relief by an order in a pending cause in the same court, the party should not be allowed to seek his or her remedy in a separate suit.⁶ However, where adequate relief would not be available, the latter suit will not abate.⁷

Observation:

One court has stated that, where there is a reversal of parties, the pendency of the prior action abates the subsequent action when, and only when: (1) the plaintiff in the second action can obtain the same relief by counterclaim or cross demand in the prior action pending against him or her; and (2) a judgment on the merits in favor of the opposing party in the prior action will operate as a bar to the plaintiff's prosecution of the subsequent action.⁸

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Footnotes

- ¹ [Daly v. White](#), 100 Cal. App. 2d 22, 222 P.2d 950 (1st Dist. 1950); [Crane v. Burns](#), 235 Ind. 583, 135 N.E.2d 832 (1956).
- ² [Annie Gardner Foundation v. Gardner](#), 375 S.W.2d 705 (Ky. 1963); [Patrick V. Koepke Const., Inc. v. Woodsage Const. Co.](#), 119 S.W.3d 551 (Mo. Ct. App. E.D. 2003).
- ³ [Barren v. Com.](#), 2013 PA Super 224, 74 A.3d 250 (2013).
- ⁴ See Am. Jur. 2d, Pleading[[WestlawNext®\(r\) Search Query](#)].
- ⁵ [Nielsen v. Nielsen](#), 3 Conn. App. 679, 491 A.2d 1112 (1985).
- ⁶ [Olson v. Leith](#), 71 Wyo. 316, 257 P.2d 342 (1953).
- ⁷ [State ex rel. J.E. Dunn, Jr. & Associates, Inc. v. Schoenlaub](#), 668 S.W.2d 72 (Mo. 1984); [First State Bank of Bishop, Tex. v. Norris](#), 611 S.W.2d 680 (Tex. Civ. App. Tyler 1980), writ refused n.r.e., (May 27, 1981).
- ⁸ [Culbertson v. Midwest Uranium Co.](#), 132 F. Supp. 678 (D. Utah 1955).

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